3141.

SUPREME COURT OF THE UNITED STATES.

No. 98.

WILLIAM B. CULBERTSON, App't,

vs.

THE STEAMER SOUTHERN BELLE—HENRY B. SHAW, WM. M. SHAW, ELAM BOWMAN, SIDNEY A. LACOSTE, & JOHN D. SEBASTIAN, Claimants.

INDEX.

	Original.	Print.
Transcript from District Court:—		
Libel, filed 7 Jan'y, 1853	2	3
Admiralty warrant	4	5
Claim	6	6
Bond	7	6
Answer	9	7
Continuance	12	9
Trial of cause	13	10
Submission of cause	14	11
Deposition of J. F. Ballinger	16	12
" " D. H. Kent	19	13
" " Peter Frust	26	17
Interrogatories to Champlin, Buckingham, and Conklin	32	20
Deposition of J. W. Champlin	48	28
Exhibits annexed to do.	43, 44, 46	26, 28
Deposition of Jno. Buckingham	70	39
" " Elijah Conklin	59	34
Interrogatories to Harvey, Holloway, and Hutchinson	37	23
Deposition of J. B. Harvey	77	42
" " W. P. Holloway	53	31
" " Wm. Hutchinson	75	41
Interrogatories to Smith, Wilson, and Sellers	39	24
Deposition of G. W. Smith	55	32
" " Sam'l Armitage	67	37
" " Isidore Strauss	83	45
" " S. Shelden	80	43
Interrogatories to Carlow, Evans, Spangler, McCoy, Dillon	89	48
Statement annexed to do.	91	49

	Original.	Print.
Transcript from District Court:—		
Deposition of H. W. Carlow	93	50
Deposition of Isaac Dillon	96	52
" " Eleazer Evans	99	53
" " O. P. Spangler	101	55
" " Jeremiah Elder	103	56
Policy of insurance	106	58
Deposition of Ed. Le Fevre	111	61
" " Michael Dolan	115	63
" " Cha's B. Callahan	117	64
" " J. M. Pettit	122	66
" " Sam'l Cowarden	125	68
Interrogatories to S. C. Keyes	130	71
" " Sheldon, Smith, Matthews, French, T. D. Smith, Aby *& als.*	133	72
Deposition of S. C. Keyes	138	75
" " Sam'l H. Aby	141	76
" " Q. A. French	145	78
" " Simeon Shelden	150	81
" " L. W. Mathews	156	84
" " Geo. W. Smith	162	86
" " Jno. Dan'l Smith	168	89
Interrogatories to W. R. McFarlane	175	93
Deposition of " "	178	94
Exhibit *A*, annexed to do.	177	94
Deposition of Chas. M. St. Clair	183	97
Opinion of District Judge	185	98
Com'rs Report	188	100
Decree, District Court	190	102
Order of Appeal	192	103
Appeal Bond	192	103
Clerk's Certificate	194	104
Citation of Appeal	195	105
Proceedings in Circuit Court:—		
Admissions of Counsel	197	106
Submission of Cause	198	106
Opinion of the Court	198	107
Final Decree	211	112
Petition of Appeal	212	112
Order granting Appeal	213	112
Appeal Bond	213	113
Clerk's Certificate	215	113

UNITED STATES OF AMERICA,
Eastern District of the State of Louisiana.

WILLIAM B. CULBERTSON
vs.
STEAMER "SOUTHERN BELLE." } No. 2320.

Pleas and proceedings before the Hon. the Circuit Court of the United States in and for the Fifth Judicial Circuit, and the Eastern District of Louisiana, at the April Term, A. D. 1854, of the said Court, held at the City of New Orleans on the 16th day of June, A. D. 1854.

Be it remembered, that heretofore, to wit, on the 26th day of April, A. D. 1854, came Henry B. Shaw, William M. Shaw, Elam Bowman, Sidney A. Lacoste, and John D. Sebastian, claimants of the Steamer "Southern Belle," by his Proctors, Messrs. Hunton & Bradford, in the Clerk's Office of the said Court, and filed a transcript of a record from the District Court of the United States for the Eastern District of Louisiana—which said transcript is in the words and figures following, to wit:—

EASTERN DISTRICT OF LOUISIANA,
U. S. District Court:
In Admiralty.

WM. B. CULBERTSON
vs.
STEAMER "SOUTHERN BELLE." } No. 6835.

Libel. Filed Jan'ry 7, 1853.

BENJAMIN and MICOU,
Proctors.

To the Honorable the District Court of the United States for the Eastern District of Louisiana.

The libel of William B. Culbertson, a citizen and resident of the State of Ohio, respectfully propounds, that he was lately the owner of a certain flat-boat called the Rainbow, with all her cargo, consisting of potatoes, apples, corn, and stoneware, &c., of great value, to wit, of the value of three thousand dollars and upwards: that said flat-boat, with its said cargo, were sent by petitioner to trade down the River, the said boat being staunch, and well found and equipped, and with a proper crew; and in descending the River, while so properly manned and equipped, she was moored at night at Grand Gulf, in the River Mississippi, in the proper and usual place for mooring flat-boats, and close by tied to the bank of the river: that

while said boat was so moored at the place aforesaid, the steamboat "Southern Belle," a packet on said river, descending, rounded to at or near the said landing, and, in attempting to land, run into and sunk the said flat-boat, which thus was totally lost and destroyed, having sunk immediately, with her cargo, by the force of said collision: that said flat-boat was in her proper position, and at the landing assigned to boats of her class, and that all usual and proper precautions had been taken on her part, and that the collision occurred from no fault or negligence on the part of her crew: that said steamboat was not properly managed, nor in her proper place for effecting the proposed landing, but, on the contrary, was out of her place, and the collision occurred by the fault, misconduct, and neglect of her officers and crew: that libellant has sustained damages as aforesaid, in the sum of three thousand dollars, for which sum the said boat, her tackle, apparel, &c., is liable, and a lien exists upon the same for said amount: that said collision occurred within the admiralty jurisdiction of this Honorable Court, to wit, in the river Mississippi, at the landing in the said town of Grand Gulf, and that said boat is now lying in the Port of New Orleans. Wherefore, libellants pray that, in consideration of the premises, process issue in due form against the said steamboat Southern Belle, her engines, machinery, tackle, apparel, and furniture: that this Court will decree and pronounce in favor of libellant for his aforesaid damages with interest and costs: that said boat, her machinery, &c., be decreed to be sold for the payment of said damages: and that all such other relief be granted as to right and justice may appertain.

BENJAMIN and MICOU,
Proctors for Libellants.

William B. Culbertson being duly sworn, says: That he is the owner of the flat-boat and cargo described in the foregoing libel, and that all and singular the allegations thereof are true and correct to the best of his knowledge and belief.

WM. B. CULBERTSON.

Sworn to and subscribed at New Orleans, this 7th January, 1853.

ROB'T M. LUSHER,
D'y Clerk.

Order of Process.

Let process issue, as prayed for.

(Signed) THEO. H. McCALEB,
U. S. Judge.

EASTERN DISTRICT OF LOUISIANA,
U. S. District Court:

In Admiralty.

WILLIAM B. CULBERTSON
vs.
STEAMBOAT "SOUTHERN BELLE." } No. 6835.

Admiralty Warrant.

The President of the United States of America to the Marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:—

You are hereby commanded forthwith to seize, and into your possession take, the steamboat "Southern Belle," her tackle, &c., now libelled by Wm. B. Culbertson, in a cause of damages on collision, claiming $3000 00 and interest, and cost, in the District Court of the United States for the Eastern District of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a District Court of the United States for the District aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said steamboat "Southern Belle" should not be condemned and sold, agreeable to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the Hon. T. H. McCaleb, Judge of the said Court, [SEAL.] this 7th day of January, 1853, and the 77th year of the independence of the United States.

ROBT. M. LUSHER,
D'y Clerk.

Marshal's Return on foregoing Warrant.

Received Jan'ry 7th, 1853, and on the same day seized the Steamboat Southern Belle, her tackle, apparel and furniture, gave notice to Capt. T. M. White, published monition, and in all respects complied with the law and commands of this warrant.

CHARLES A. LABUZAN,
D'y Marshal.

EASTERN DISTRICT OF LOUISIANA,
U. S. District Court:

In Admiralty.

WM. B. CULBERTSON
vs.
STEAM'R "SOUTHERN BELLE." } No. 6835.

Claim filed January 7th, 1853.

WM. B. CULBERTSON
vs.
"STEAMER SOUTHERN BELLE." }

Claim.

And now comes James M. White into Court and deposes, on oath, that the true and lawful owners of the said steamboat "Southern Belle" are Elam Bowman, H. B. and W. M. Shaw, S. A. Lacoste, residents respectively of the Parishes of Tensas, Concordia, and Pointe Coupée, and T. D. Sebastian, of New Orleans, and that this deponent is the master thereof, and bailee for said owners.

Wherefore, deponent prays that said boat be delivered to him as master and bailee, as aforesaid, for the said claimants, on his giving the stipulation in favor of libellant required by law, and otherwise complying with the rules of this Honorable Court.

J. M. WHITE.

Sworn to and subscribed at New Orleans, this 7th Jan'y, 1853, before

ROB'T M. LUSHER,
D'y Clerk.

EASTERN DISTRICT OF LOUISIANA,
U. S. District Court:

In Admiralty.

WM. B. CULBERTSON
vs.
STEAM'R "SOUTHERN BELLE." } No. 6835.

Bond of $5,000 00 *for Release of Boat: Filed and Recorded Jan'y 11th,* 1853.

Know all men by these presents, that we, James M. White, master and bailee thereof for the owners, Elam Bowman, H. B. and W. M. Shaw, S. A. Lacoste, and T. B. Sebastiani, of Louisiana, claimants, and H. B. Shaw and W. M. Shaw, owners of the steamboat "Southern Belle," as principals, and John C. Shannon, of New Orleans, as surety, are held and firmly bound unto William B. Culbertson, libellant, in the sum of five thousand dollars, lawful money of the

United States, for the payment whereof to the said W. B. Culbertson, his heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us, at New Orleans, this 7th day of January, A. D. 1853.

Whereas an Admiralty Warrant was lately issued out of the Honorable the District Court of the United States for the Eastern District of Louisiana, at the suit of Wm. B. Culbertson *vs.* Steamboat "Southern Belle," her tackle, apparel, and furniture, and numbered 6835 on the docket of the said Court, commanding the Marshal to seize and take into his possession the Steamboat "Southern Belle," which has been seized accordingly, but has been released from said seizure and delivered to James M. White, at the time and by reason of the signing, sealing and delivering of these presents, filed a claim to the said Steamboat "Southern Belle," in the Clerk's office of the said Court, and which claim is now of record.

Now, the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the Court, and pay the said libellants the amount awarded by the final decree, rendered in the Court to which the process is returnable, or in any appellate Court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

(Signed) T. M. WHITE, [L. S.]
(Signed) H. B. SHAW and
W. M. SHAW, [L. S.]
(Signed) JOHN C. SHANNON, [L. S.]

Signed, sealed and delivered in the presence of
(Signed) CHAS. A. LABUZAN.

EASTERN DISTRICT OF LOUISIANA,
U. S. District Court:

In Admiralty.

WM. B. CULBERTSON
vs.
STEAMER "SOUTHERN BELLE." } No. 6835.

Answer: Filed Jan'y 29th, 1853.

HUNTON & BRADFORD,
Proctors.

U. S. DIS'T C'T:

WILLIAM B. CULBERTSON
vs.
STEAMBOAT "SOUTHERN BELLE."

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana.

And now comes Henry B. and William M. Shaw, of the Parish of

Concordia; Elam Bowman of the Parish of Tensas; Sidney A. Lacoste of the Parish of Pointe Coupée, and John D. Sebastian of the city of New Orleans, intervening for their interest in the Steamboat "Southern Belle," her tackle, apparel and furniture; and for answer to the libel and complaint of William B. Culbertson, of the State of Ohio, allege and articulately propound as follows:—

1. That these respondents are the true and lawful owners of the said steamboat "Southern Belle," her tackle, apparel and furniture.

2. That the said steamboat "Southern Belle" at the time of the collision with the flat-boat called the "Rainbow," was tight, staunch and strong; in all respects well furnished, equipped and manned, and employed in the lawful commerce and navigation of the River Mississippi.

3. That the said steamboat "Southern Belle" when running as a regular packet between New Orleans and Milliken's Bend, in the State of Louisiana, left the port of New Orleans on the 1st January, inst. (1853), and while ascending the river, in the morning of Monday, 3d January inst., shortly before daybreak approached the town of Grand Gulf, in the State of Mississippi. That on drawing near the landing place at said Grand Gulf, or the wharf-boat, that served as a landing place, it was discovered that another steamboat, heavily laden, and with its guards filled with cattle or live-stock, was already made fast and lying at the said wharf-boat.

That in as much as the wind was at the time blowing very heavily on shore, it was not thought prudent or safe to attempt to make fast alongside of the steamboat, then occupying the landing place or wharf-boat, and therefore the said steamboat "Southern Belle" dropped down with the intention of coming in astern of the aforesaid steamboat so lying at the wharf-boat, and below the said wharf-boat. That as the "Southern Belle" dropped down accordingly and was coming into the shore below the said wharf-boat, it was then for the first time discovered that a flat-boat was lying close on and under the high bank of the river, about thirty yards below the said wharf-boat.

That the "Southern Belle" immediately on discovering the said flat-boat, attempted to back out and keep off, so as to avoid a collision with the said flat-boat, but in consequence of the wind blowing very heavily as above stated, it was found impossible to prevent a collision.

That the place below the said wharf-boat where the flat-boat was then lying, was specially appropriated to the use of steamboat, known as such under the name of the "Cotton Landing," and where the Southern Belle regularly lands every trip for the purpose of taking in cotton.

That another portion of the port of Grand Gulf, about three hundred yards above the wharf-boat, is appropriated for the use of flat-boats.

That the master of the said flat-boat was notified before the said collision, that his flat-boat was not moored in her proper place; but

that he persisted in remaining in his then position; that although not moored in his proper place, he neglected to keep any light on his boat or to use any precaution in order to give notice of his position; and that the collision aforesaid occurred, not through any negligence or want of skill on the part of the officers or crew of the "Southern Belle," but in consequence of the imprudence, negligence and remissness of the master and crew of the said flat-boat.

That the said flat-boat and cargo were not of the value alleged by the libellant, nor was there a total loss, as alleged, of the said flat-boat and cargo.

That all and singular the premises are true; in verification whereof, if denied, respondents crave leave to refer to the depositions and other proofs to be exhibited herein.

Whereupon respondents pray that the libel and complaint of the libellant be dismissed, with costs, and for general aid and relief.

HUNTON & BRADFORD,
Proctors.

Wm. M. Shaw, one of the respondents and claimants herein, on oath deposes that he is the agent of his co-claimants and owners, and that the allegations and matters herein set forth are true.

WM. M. SHAW.

Sworn to and subscribed at New Orleans, this 29th January, 1853, before

ROB'T M. LUSHER,
D'y Clerk.

U. S. DISTRICT COURT:

WM. B. CULBERTSON
vs. } No. 6835.
STEAM. "SOUTHERN BELLE."

Proceedings in Court.

December Term, 1853.

Tuesday, Jan'y 3d, 1854.

Present: Hon. T. H. McCALEB.

This case having been called up for hearing:

On motion of John Finney, Esq., Proctor for the Libellant (the other party being absent), it is ordered by the Court that it be continued till, and reassigned for Thursday, the 12th inst., at 10 A. M., and that the claimants' proctors be notified thereof.

Same Term.

Thursday, Jan'y 12, 1854.

This cause was called up for hearing to-day, John Finney, Esq., of counsel for the libellant, and Edward A. Bradford, Esq., for the

claimants appearing, when, on motion of the latter, it was ordered that it be continued.

Same Term.

Saturday, Jan'y 14, 1854.

On motion of John Finney, Esq., of counsel for libellant, it is ordered that this case be set down for trial on Monday, the 30th inst., at 10 A. M., and that the claimant's proctors be notified.

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
STEAM. SOUTHERN BELLE. } No. 6835.

Proceedings in Court.

December Term, 1853.

Monday, Jan'y 30th, 1854.

This cause came regularly up for hearing to-day. Jno. Finney, Esq., appearing for the libellant, and Logan Hunton, Esq., for the claimants and respondents.

The pleadings (libel and answer) having been read, the libellant offered in evidence and read: 1, The depositions of J. F. Ballinger, D. H. Kent, and Peter Frust.

2, Those of Jas. W. (that of D. H. Kent, objected to, admitted subject to exceptions) Champlin, W. P. Holloway, Geo. W. Smith, Elijah Conklin, Sam'l Armitage, John Buckingham, Wm. Hutchinson, J. B. Harvey, S. Sheldon, and Isidore Strauss, (taken by Com'r Maxwell, and filed 3d May, '53,) with interrogation and documents therein referred to. 3, Those of H. W. Carlow, Isaac Dillon, Eleazer Evans, O. S. Spangler, and Jeremiah Elder, (taken by Justice Harrison and ret'd Dec'r 21st, '53,) with interrogatories, &c.; and 4, Policy of Insurance on Flat-Boat, $400, of 29th Nov'r, 1852. Zanesville, Cincinn'i, Ohio.

The claimants and respondents then offered in evidence, and read: 1, The depositions of Edward Le Fevre and Michael Dolan: 2, That of Charles B. Callahan; 3, That of J. M. Pettit; 4, That of Sam. Cowarden; 5, Those of S. C. Keyes, S. H. Aby, S. Sheldon, and Geo. W. Smith, (taken with others under Commission, by Com'r Maxwell, at Grand Gulf, Mi., 25th, Feb'y, 1853;) when the further hearing of the cause was continued until to-morrow.

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE. } No. 6835.

Proceedings in Court.

December Term, 1853.

Tuesday, Jan'y 31, 1854.

The hearing of this cause was resumed, John Finney, Esq., appearing for the libellant, and Logan Hunton, Esq., for the claimants and respondents.

The claimants and respondents further offered and read in evidence (5th, from 30th) the depositions of L. W. Mathews (omitting that of Q. A. French) and John D. Smith (taken under Commission of 10th Feb'y, 1853, with others preceding, by Comm'r Maxwell, at *at* Grand Gulf, Mi.); 6, the deposition of Wm. R. Macfarlane, (taken under Commission of 4th March, '53, by Com'r Maxwell;) and 7, that of Chas. M. St. Clair; when the libellant offered in evidence the deposition of Q. A. French, (taken for the claimants,) and the testimony was closed.

The facts and law of the case were then argued by John Finney, Esq., for the libellant, opening and closing, and Logan Hunton, Esq., for the claimants and respondents; when the Court took the case under advisement.

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE. } No. 6835.

1. Depositions of J. F. Ballinger, D. H. Kent, and Peter Trust. Offered in evidence for lib't Jan'y 30th, 1854.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Be it remembered, that on this 8th day of January, in the year of our Lord one thousand eight hundred and fifty-three, before me, William H. Hunt, a Commissioner duly appointed by Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817, and the Act passed Sept. 24, 1789, entitled "An Act to establish the Judicial Courts of United

States, personally appeared J. F. Ballinger, D. H. Kent, and Peter Trust, residing out of this State, witnesses, of sound mind and lawful age, for the libellant in a civil suit, now depending in the District Court of the United States in and for the Eastern District of Louisiana, wherein William B. Culbertson is libellant, and the Steamer Southern Belle is defendant; and, the said witnesses being by me first carefully examined and cautioned, and sworn on the Holy Evangelists of Almighty God to testify the whole truth, and nothing but the truth, did depose and say as follows in the annexed pages, numbered from 1 to 11 inclusive.

U. S. DIST. COURT: In Admiralty.

WILLIAM B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE.

J. F. Ballinger, being sworn, deposes as follows:—

I reside in Maysville, Kentucky. I was at Grand Gulf on the 3rd January instant; I was selling ploughs there on consignment. I saw a flat-boat there, the name of which I do not know, commanded by a person now present whose name I do not know. On Sunday night, 1st inst., after dark, I came out from supper on the wharf-boat, and about twenty persons were present when a log drifted against the flat-boat and knocked a hole in her bow. I went aboard the flat-boat, and several other persons went aboard from the flat-boats near, and assisted in saving her, and stopping the leak. I did not leave her until I thought she was perfectly secure and the leak entirely stopped. I do not think I was on board of her more than a half or three-quarters of an hour. I saw the pumps going all the time I was there, and left them pumping. I considered the boat safe when I left. She was not taking any water when I left. This occurred about 7 o'clock, I think. The flat-boat appeared, from what I saw in the bow, to be fully laden. I do not know of what her cargo consisted. All that I noticed was some stoneware, and the next morning I saw them lifting some barrels of apples out of the wreck. I did not see the collision that occurred the next morning with the Southern Belle. I was asleep then. It was about between 7 and 8 o'clock in the morning that I went out on the wharf-boat and saw them taking some flour or five barrels out. The flat-boat was moored from 50 to seventy-five yards below the wharf-boat. I am not familiar with the divisions of the landing at Grand Gulf. The flat-boat was tied fast to the bank. She was secured by lines at both ends.

Cross-Examined.

I saw the flat-boat first on Sunday afternoon, the 2d inst. She

was just landing then at Grand Gulf. She first made her lines fast to the wharf-boat, and then moved them and dropped down some fifty or 75 yards below, and made fast at that point. This was before the flat-boat was struck by the log. I am not able to say if that was her first arrival at Grand Gulf, or if she had been there before. I think it was between 2 and 3 that I first saw her. I do not know if she had met with any accident or injury at that time. It was some time after supper, about 7 o'clock, that I first went aboard of her; when she was struck by the log, I saw the log drifting past the wharf-boat toward the flat-boat, and saw it strike the flat-boat forward and knock a considerable of a chunk of a hole in her, and make a tremendous crash among the stoneware. They then hailed the flat-boat from the wharf-boat to know if they wanted assistance, and, learning that they did, all went on board of her from the wharf-boat. In order to lighten the flat-boat and get at the leak, some portion of the cargo was thrown on the bank, and some portion—I do not know how much—was thrown into the river. The cargo put on the bank consisted of stoneware, and that thrown in the river was stoneware, so far as I saw. I saw nothing else thrown into the river but stoneware, although there might have been something else. I was in the bow only of the flat-boat, and have no idea how much and what cargo she had. I do not know how many hands were on the boat that belonged to her. I saw several on board giving assistance at the time. They were still pumping when I left, but I do not know how much water there was in her. This was the last I saw of the flat-boat that evening. When I first saw her the next morning the roof only was visible, and was still held by the fastenings to the shore. I saw only five or six barrels of apples that were saved from the wreck. I remained there up to Tuesday night, and there was nothing more saved that I know of. I came to Natchez first, and thence to New Orleans. I have not seen either the master or any of the crew of the flat-boat since I left Grand Gulf until to-day.

Re-examined.

J. F. BALLENGER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me, this 8th day of January, 1853, at New Orleans.

WILLIAM H. HUNT,
U. S. Comm.

(*Deposition of D. H. Kent objected to, but admitted, subject to exception.*)

D. H. Kent, being sworn, deposes as follows:—

I was in command of the flat-boat belonging, with her cargo, to the plaintiff. The flat-boat had no name on her, but she was called the Rainbow. I started from Zanesville with a part of the cargo,

dropped down about 4 or four and a half miles below, and took in another part, and dropped down about ten miles and took in the remainder. I took most of the cargo at farms of Mr. Culbertson, one about four and the other about 15 miles below Zanesville. I was engaged by Mr. Culbertson for the voyage. The flat-boat was 77 feet long and 18 feet wide. She was built at Zanesville. I noticed her before she was loaded, and considered her as strong and well built as boats usually are.

The cargo consisted of twenty-four hundred and forty-nine gallons of stoneware, sixty-six dozen of half-gallon jugs, in that neighborhood, two dozen and a half quart jugs; 4 barrels of onions (12 bushels): this we took at Zanesville. At the first farm we took about twenty-one or twenty-two hundred bushels of potatoes in bulk; twenty hundred bushels of corn in the ear. I did not measure the wagons, but took the measurement from what was there told me. This was in bulk. We took 30 barrels of apples also. This was all the cargo of the boat, except some chickens. There was a skiff along also, worth about ten dollars. We had a sufficient quantity of cooking utensils and of provisions for the voyage. I had some clothing and a gun on board lost by the collision. (This answer of the witness objected by counsel for the claimants.)

I left the lower farm of Mr. Culbertson in November, about the 27th. I met with no accident up to our arrival at Grand Gulf. I brought with me three men as far as Memphis, and from there four to Grand Gulf, beside myself. We arrived at Grand Gulf on Sunday evening about four or five o'clock, and secured our boat below the wharf-boat. I suppose upwards of a 100 yards below. I secured her by lines: a bow line, stern line, and breast line; and, after the log struck us, I put out another breast line, making a fourth line. She was moored within three or four feet from the bank at the stern, and her bow about six feet from the bank. Whilst lying there after dark, we were struck by a log. It struck in the bow between the first and second studden on the outside. The main hole broken was above the water, but the plank was shivered for 3 or four inches below the water. It caused the boat to leak. I got assistance, and went to work and threw out some ware on deck, and some in the river, and some on the bank, until we got down to the leak. We then got mallet and chisel and some oakum, and went to work and caulked the leak, so that it was perfectly tight when we got through. We were some half or 3-quarters of an hour from the time the log struck us before we quitted. We pumped her out until there was not more than a half an inch of water at the pump. I continued to sound the pumps through the night to see if she leaked. The pumps sucked, and we could get no water out. After the log had struck us, and before repairing, we slacked up the bow line and allowed our bow to swing round, so as to put her bow down stream, so as to prevent the current from striking the place that had been broken. She was then made fast as close to shore as we could get

her. On the next morning witness was up early and on the deck of the boat, when I saw the Southern Belle coming up, and was looking at her coming up. I had been up some 15 or twenty minutes. I had been up and down all night on deck. On perceiving a boat approaching, I went down below and got a light, and brought it out on deck. This was about 15 or twenty minutes before the collision. A man of the name of George Fulcher was on deck with me. He was one of the hands, and had been paid off, and was waiting for a boat to go up. I supposed that when the Southern Belle first passed us she was about a hundred yards off. It was a clear morning, and the wind was high, blowing across the river towards the flat-boat. Daylight had begun to dawn. As the boat passed us, I saw her name distinctly enough to read it. Before the boat got opposite at us, Fulcher, who was waiting for a boat to take him to Memphis, said that was not the boat for him—that that was the Southern Belle. She went up past us some little above the wharf-boat. She apparently attempted to make a landing there. There was another boat lying aside of the wharf-boat. She was coming in very fast towards the steamboat lying at the wharf-boat, when she commenced backing. She continued to back until she struck us. She came broadside towards us, and her bow forward of her boilers struck the stern of the flat-boat first. The consequence the Southern Belle mashed up the flat-boat, and she went down immediately, except the deck. I was at the time near the stern of the flat-boat. *I was at the time near the stern of the flat-boat*, and, as soon as the deck of the flat-boat got even with the water, I jumped on to the guards of the steamboat. As the steamboat approached us, I jerked up a pole, and called to the hands to take hold of poles or rails, whichever they could get, to fend off. There were then three hands on deck beside myself. Fulcher had then gone below. There was water in the cabin when he crawled out of the broken deck, wet. I set the lantern down about the middle of the deck when I took up the pole. The deck separated and went off in parts. Some of the cargo floated off. The water was at the outside of the boat about 15 or twenty feet deep, and a very bluff bank, deep close to the shore. I went to work to endeavor to save part of the cargo, and some of the hands of the steamboat assisted in carrying out some of the jugs. We saved some twenty-five or 28 barrels of apples. They were got out of the water all wet, and some of them muddy. The stoneware and apples saved were left on the bank. Some one from the steamboat called out to the men to save what they could, and then the capt. and mate told them to carry it ashore. The second or third clerk came to me—I think it was one of the clerks—at all events, one of the men on board came to me and told me to go up and see the captain. I went up. The captain first asked me what the load consisted of. I commenced telling him, and then he asked me how much it was worth. I told him I did not know, that the owner was at Port Gibson. He then told me that he was going to

Vicksburg, and would be down the next Tuesday night, and would try and make all right with the owner. (To this conversation the proctor of claimant objects.)

I had sold, on the way down, portion of the cargo amounting to some $48 and some few cents. I sold some potatoes and some apples. I cannot tell how many of the jugs were thrown overboard at the time the log struck us. I suppose that night, from the looks of the hold and the space made vacant, that there were some 250 gallons or thereabouts broken and thrown overboard. Mr. Culbertson, the libellant, was the owner of the flat-boat and cargo.

Cross-Examined.

The jugs were taken on board by me at Zanesville, and I received them from McCay, who is a dealer in dry-goods and groceries. He has been a dealer in stoneware, and I think still is. Mr. Culbertson bought the stoneware from McCoy. I was with him when he bargained for it. He was to pay for the gallons four an ½ cents per gallon, for the half gallon jugs thirty-seven ½ cents per dozen, and for the quarts thirty-one cents per dozen.

We calculated to run to Grand Gulf, and from there to the mouth of Bayou Pierre, and thence to Port Gibson, when we started on our trip. We had stopped at a great many points before reaching Grand Gulf. We sold potatoes at Memphis, 100 bushels, at forty cents per bushel. At Deer Creek landing I took out two barrels of apples, which I sold at $2 50 per barrel. At a point this side of Deer Creek I sold a man 4 bushels of potatoes at 50 cts. per bushel, between Memphis and Grand Gulf. At different places people came out in skiffs and purchased a few dozen of apples at a few dimes. I do not know whether there was any insurance on the boat and cargo. I have heard Mr. Culbertson say that he had taken out insurance for four hundred dollars. I did not hear him whether it was on any particular thing, or on the boat and cargo. I have landed before at Grand Gulf, in a flat-boat, twice before, and thought myself familiar with the landing. I had always tried to land at the place I then landed at, but never could make it. I have made my landings lower down. When I came in I sent out my line and made it fast to the wharf-boat, and then swung in to my landing below. The bow line was not fast to the wharf-boat more than ten or fifteen minutes; only long enough for us to get another line ashore. We then put out another line to a post below the wharf-boat, and then cast off the other line fast to the wharf-boat. It was a bluff caving bank, and seven and eight feet above the deck of the boat. The deck of the boat was some 2 and a half feet above the surface of the water. After swinging round, after the accident, the boat lay as close in to the bank as possible. Our boat drew, on an average, about 3 feet of water. After stopping the *the* leak, I left a watch on deck. I was on watch part of the time, and took turns with Peter Trust, Elijah

Dingy, and Jesse Kent. I was up pretty much all night. These were the only men then employed on the boat. Geo. Fulcher acted the same as a hand, but he had been paid off. I cannot say at what hour in the morning the collision took place. I do not know what hour day breaks. There was a moon at the time. I do not know how high it was. I saw the boat coming up, and stayed up till I could read her name before I went below for a light. I did not go for the light immediately after reading her name, but she had passed above us, and was trying to make her landing at the wharf-boat when I went below for a light. She had not given any indication of intending to make her landing below the wharf-boat, but as the wind was blowing very hard, and there was another boat at the wharf, I concluded that possibly she might drop in below the other boat. I do not recollect whether the lantern was burning below, or whether I lighted it myself. I cannot be positive on that point, but I am told that I had it lit when I came on deck. I am positive it was then lit, because my own eyes saw it. It was a tin lantern, with a candle. I do not know whether it was a tallow candle or not. It was what is termed a summer pressed candle. I do not know how long it was before the collision took place after I came on deck. It might have been more or less. When I returned to the deck, I think there was but one person on deck, but I do not recollect. The wind was very high. I cannot say whether the lantern was open or shut, but generally when the wind is high I keep the lantern shut. The lantern was all of tin, with holes pierced in it; a common tin lantern.

D. H. KENT.

Examination reduced to writing, and by the witness subscribed and sworn to, at New Orleans, this 8th day of January, 1853, before me,

WILLIAM H. HUNT,
U. S. Comm.

Peter Frust, being sworn, says as follows:—

I was one of the hands of the flat-boat, and got on board of her at Mr. Culbertson's farm, about 4 miles below Zanesville. I was with her until she sank. I was on board of her when she was struck by a log at Grand Gulf. The damage done by this accident was entirely repaired, and she was perfectly dry and safe that night; I tried the pumps myself several times in the night; I was up on deck when she was struck by the steamboat in the morning. I was below warming, when some one on deck called out to Fulcher, who was also below, that there was a boat coming. Fulcher went up. I remained below until I heard them reading the name of the boat, and Fulcher said he would not go on her; I went up a few moments afterwards. The Southern Belle was nearly in the middle of the river, as I would guess, but the distance I consider very uncertain. She was below us a little, going up. She continued up past us a little

above the wharf-boat, and appeared to be making her landing there when she backed out. She then dropped below, and came in against us. Her bow, or the forward part of her guards, struck the stern of the flat-boat, which was lying up stream. The flat-boat sank immediately. I saw the light brought up by Capt. Kent on deck. I cannot tell how long before the collision he brought the light up, but it was some time before. It was while the steamer was trying to make her landing at the wharf-boat that the light was brought up. The flat-boat was of the middling size. Her cargo consisted of stoneware, potatoes, apples and onions, and corn. She was nearly full while at the landing at Grand Gulf. The flat-boat was secured close to the bank by four lines—a bow line, double breast line, and stern line. This was after she had been struck by the log. I tried to fend off. I had a piece of wood. Three or 4 of us tried to fend off. There was a good deal of hallooing about the flat-boat to each other.

Cross-examined.

When I came on deck I found Capt. Kent there. No one else was on deck. He had the lantern on deck then. When I first looked out I saw the Southern Belle below us as I stood on the steps. This was after Fulcher had read her name. I then went below again for a few moments. I there went out to look at the boat again, seeing her try to make her landing. She was when I came on deck a second time, a little below the wharf-boat. I cannot say for certain, but I believe the Captain had the light on deck when I came out a second time. I cannot say how long it was after I came on deck a second time before the collision took place. It may have been ten, 15, or 20 minutes. We called for the other men to come on deck as the steamboat came near. We lay about as close to the bank as we could get. I did not see the Captain light the candle in the lantern, but I saw him taking it up lit. The Captain had the lantern out when I came on deck a second time. I know that I was below when the Captain came down after the lantern. I did not see him light the candle. He went out before I did with the lantern. I went up a short time afterwards. I cannot tell how long after. It was not over 5 minutes as furthest. I went on the deck the second time merely because I wanted to see the boat come in. The Captain had not called for me. It was after I went on deck that the other men were called. When I went on deck a second time, I cannot say for certain, but it seems to me the steamboat was kind of making in for the wharf-boat. I cannot say how far she was from us. The wind was strong, blowing across the river towards us.

his
PETER + FRUST,
mark.

Examination taken reduced to writing, and by the witness subscribed with his mark, and sworn to at New Orleans, this 8th day of January, A. D. 1853, before me,

WILLIAM H. HUNT,
U. S. Comm.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans.

William H. Hunt, a Commissioner duly appointed by the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act passed Sept. 24, 1789, entitled "An Act to establish the Judicial Courts of the United States," do hereby certify that the reason for taking the foregoing deposition is, that the witnesses reside out of this State, and were about to depart therefrom; I further certify that E. A. Bradford, Esq., proctor for the steamer Southern Belle, was present at the taking thereof, and put interrogatories in behalf of said defendants, and Wm. C. Micou was present, proctor for the libellant; I further certify that on the 8th day of January, A. D. 1853, I was attended by said Counsel, E. A. Bradford, Esq., for the steamer Southern Belle, and Wm. C. Micou for the Libellants, and the witnesses by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses; and after carefully reading the same to the witnesses, they subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding them to the Court for which they were taken. I further certify that I am not of counsel or attorney to either of the parties in said depositions mentioned, or in any way interested in the event of said civil cause depending between Wm. B. Culbertson and the steamer Southern Belle.

In testimony whereof, I have hereunto set my hand and seal this 8th d. of January, in the year of our Lord one thousand eight hundred and fifty-three.

WILLIAM H. HUNT,
U. S. Commissioner Circuit and District Courts
U. S. for the Eastern District of Louisiana.

Commissioner's fee $20, paid by Libellants.

above the wharf-boat, and appeared to be making her landing there when she backed out. She then dropped below, and came in against us. Her bow, or the forward part of her guards, struck the stern of the flat-boat, which was lying up stream. The flat-boat sank immediately. I saw the light brought up by Capt. Kent on deck. I cannot tell how long before the collision he brought the light up, but it was some time before. It was while the steamer was trying to make her landing at the wharf-boat that the light was brought up. The flat-boat was of the middling size. Her cargo consisted of stoneware, potatoes, apples and onions, and corn. She was nearly full while at the landing at Grand Gulf. The flat-boat was secured close to the bank by four lines—a bow line, double breast line, and stern line. This was after she had been struck by the log. I tried to fend off. I had a piece of wood. Three or 4 of us tried to fend off. There was a good deal of hallooing about the flat-boat to each other.

Cross-examined.

When I came on deck I found Capt. Kent there. No one else was on deck. He had the lantern on deck then. When I first looked out I saw the Southern Belle below us as I stood on the steps. This was after Fulcher had read her name. I then went below again for a few moments. I there went out to look at the boat again, seeing her try to make her landing. She was when I came on deck a second time, a little below the wharf-boat. I cannot say for certain, but I believe the Captain had the light on deck when I came out a second time. I cannot say how long it was after I came on deck a second time before the collision took place. It may have been ten, 15, or 20 minutes. We called for the other men to come on deck as the steamboat came near. We lay about as close to the bank as we could get. I did not see the Captain light the candle in the lantern, but I saw him taking it up lit. The Captain had the lantern out when I came on deck a second time. I know that I was below when the Captain came down after the lantern. I did not see him light the candle. He went out before I did with the lantern. I went up a short time afterwards. I cannot tell how long after. It was not over 5 minutes as furthest. I went on the deck the second time merely because I wanted to see the boat come in. The Captain had not called for me. It was after I went on deck that the other men were called. When I went on deck a second time, I cannot say for certain, but it seems to me the steamboat was kind of making in for the wharf-boat. I cannot say how far she was from us. The wind was strong, blowing across the river towards us.

his
PETER + FRUST,
mark.

Examination taken reduced to writing, and by the witness subscribed with his mark, and sworn to at New Orleans, this 8th day of January, A. D. 1853, before me,

WILLIAM H. HUNT,
U. S. Comm.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans.

William H. Hunt, a Commissioner duly appointed by the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act passed Sept. 24, 1789, entitled "An Act to establish the Judicial Courts of the United States," do hereby certify that the reason for taking the foregoing deposition is, that the witnesses reside out of this State, and were about to depart therefrom; I further certify that E. A. Bradford, Esq., proctor for the steamer Southern Belle, was present at the taking thereof, and put interrogatories in behalf of said defendants, and Wm. C. Micou was present, proctor for the libellant; I further certify that on the 8th day of January, A. D. 1853, I was attended by said Counsel, E. A. Bradford, Esq., for the steamer Southern Belle, and Wm. C. Micou for the Libellants, and the witnesses by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses; and after carefully reading the same to the witnesses, they subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding them to the Court for which they were taken. I further certify that I am not of counsel or attorney to either of the parties in said depositions mentioned, or in any way interested in the event of said civil cause depending between Wm. B. Culbertson and the steamer Southern Belle.

In testimony whereof, I have hereunto set my hand and seal this 8th d. of January, in the year of our Lord one thousand eight hundred and fifty-three.

WILLIAM H. HUNT,
U. S. Commissioner Circuit and District Courts
U. S. for the Eastern District of Louisiana.

Commissioner's fee $20, paid by Libellants.

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE. } N. 6835.

2d. Commission, interrogatories, Exhibits *A B C*, and depositions returned by J. A. Maxwell, Com'r, and offered in evidence for libellant.

January 30, 1854.

District Court of the United States, holding sessions at New Orleans in and for the Eastern District of Louisiana.

To E. BRUNER, Esq., or to F. A. MAXWELL, Esq.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Joseph W. Champlin, William P. Holloway, George W. Smith, Elijah Conklin, Samuel Armitage, John Buckingham, William Hutchinson, John B. Harvey, Simeon Shelden and Isydore Strauss, and them duly examine on oath, touching and concerning certain matters and things in a case now depending in the said Court, wherein William B. Culbertson is libellant and the owners of the Steamboat Southern Belle (Southern Belle) are claimants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this Court without delay, to be read in evidence on the trial of said cause; and send also this writ, with such interrogatories as are hereto appended by the Proctors for s'd parties.

Witness the Honorable THEO. H. MCCALEB, Judge of the District Court of the United States at the city of New Orleans, this seventh day of March, Anno Domini 1853, and the 77th year of the independence of the United States of America.

N. R. JENNINGS,
Clerk.

By ROBERT M. LUSHER,
D'y Clerk.

U. S. D. C.

W. B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE. }

Interrogatories to be propounded to Joseph W. Champlin, John Buckingham and Elijah Conklin, residents of Grand Gulf, Miss., and material witnesses for libellants:—

1. What is your profession or occupation? do you hold any office

in the town of Grand Gulf? if yea, what office, and how long have you held it?

2*d*. How are the landings assigned to different classes of boats in said town? If by ordinance, say what is the date of the ordinance in force?

3*d*. Do you know where the wharf-boat lay, on or about the 3d January last? if so, state the place with reference to the nearest streets.

4*th*. Where did Runnel's old wharf lie? Is any part of it still remaining? nearest what street?

5*th*. How many flat-boat landings are there at Grand Gulf? Is there any below the wharf-boat? If yea, how far below the wharf-boat does the flat-boat landing begin?

6*th*. Do you know whether the wharf-boat was at her usual place on the 3d January, or had she dropped lower down? If lower, how much lower had she dropped?

7*th*. Do you know anything of a flat-boat struck about that date, by the Southern Belle? If yea, state where she lay at the time of the collision? how far below the wharf-boat, &c.?

8*th*. Did you measure or assist in measuring the distance; or what are your means of information?

9*th*. At what landing *landing* was the flat-boat lying when the collision occurred? between what streets? was it below or above Runnel's wharf?

10*th*. Do do you know whether a berth had been assigned to her by any one? and by any one, then say by whom, and all the circumstances.

11*th*. Annex to your answers a diagram showing the steamboat landing, the flat-boat landing, the place of the wharf-boat, and that of the flat-boat at the time of the collision.

12*th*. State all else within your knowledge of benefit to the libellant.

BENJAMIN & MICOU,
of Counsel.

The respondents, reserving all legal exceptions to the foregoing interrogatories, annex the following cross-interrogatories:—

I. If you state that landing-places are assigned for different classes of boats in the port of Grand Gulf, by any law or ordinance, please annex a printed copy of the same, or if you do not, state why you do not so annex a copy. Are there any printed copies to be procured? or is the ordinance out of print? Has the said ordinance been regularly and constantly enforced, or has it fallen into neglect or disuse?

II. Is there any portion of the landing at Grand Gulf which is popularly known by the "Cotton Landing?" If so, what portion, and what is the extent of it? Is it usual for boats to come at the

cotton landing ascending or descending? Is it usual for flat-boats to moor at the place known by the Cotton Landing?

III. If you state that there is more than one "flat-boat landing" in the port of Grand Gulf, please state the position and extent of each landing, and whether fixed by law or custom; please state which flat-boat landing is most used.

IV. If you state that the wharf-boat had been moved in any way, please state how far and for what reason, and at what time the change of position was made; was the wharf-boat, at the time referred to, lying in the position allowed to be by the laws or usages of the Port?

V. If you state the position in which the flat-boat lay at the time of the collision, state your means of knowledge; was or was she not there lying at a place known as the Cotton Landing? Is it, or is it not usual for steamboats to come in at that place for the purpose of taking in cotton, or discharging cargo?

VI. Do you know of anything further that can be of service to the respondents? If so, please state the same fully and particularly.

HUNTON & BRADFORD,
for Respondents.

Additional Interrogatories to be answered by Elijah Conklin.

I. Are you the Harbor-master of Grand Gulf? If so, what is your salary, and how long have you held your present office?

II. Since you have been in office, have the laws and ordinances for the port of Grand Gulf been steadily enforced and observed, or have the said laws and ordinances, so far at least as they refer to the division of the port, fallen into neglect and disuse?

III. Is not the portion of the landing immediately below and adjoining the wharf-boat known by the Cotton Landing? How far does the Cotton Landing extend? Do not the steamboats, both ascending and descending, frequently come in at the Cotton Landing? Is not the "Southern Belle" a regular packet? At what hour and on what day does she ordinarily pass Grand Gulf ascending? Does she not usually stop at Grand Gulf? Does not the said Southern Belle frequently come in at the Cotton Landing? Did you ever object to the "Southern Belle" coming in at the Cotton Landing? If so, when and to whom?

(*Cross-Interrogatories to E. Conklin Continued.*)

IV. Are not the ordinances of the authorities at Grand Gulf for the regulation of the landing, almost, if not quite, out of print? When was the last edition of the same published?

V. Do you know of anything further that can be of aid to the respondents? If so, please state the same fully and particularly.

HUNTON & BRADFORD,
for Respondents.

I certify that the foregoing interrogatories and cross-interrogatories were by me propounded to the witnesses, W. Champlin, John Buckingham, and Elijah Conklin, and the additional cross-interrogatories to the said Conklin, their answers to which, on oath, are herewith returned.

March 29, 1853. JAMES A. MAXWELL,
Comm.

U. S. D. C.

W. B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE.

Interrogatories to be propounded to J. B. Harvey, W. P. Holloway, and W. Hutchinson, residents of Grand Gulf, Miss., and material witnesses for Libellant:—

1*st*. What is your profession or occupation?

2*d*. Do you know anything of a flat-boat being struck by the Southern Belle at the landing at Grand Gulf about the 3d January last, and if so, what were your means of information?

3*d*. Of what did the cargo of said boat consist? What was the value of the boat and cargo at the time?

4*th*. What was the current price for stoneware per gallon or per ½ gallon, and quart jugs? What of onions? What of apples? What of potatoes? What of corn? What was the vatue of the boat and skiff?

5*th*. Was any part of the cargo of said boat saved? If it was, how much? Of what value and what became of it?

6*th*. State all else within your knowledge of benefits to pl'ff.

BENJAMIN & MICOU,
for Lib't.

Cross-Interrogatories.

I. If you state of what the cargo of the flat-boat in question consisted, please state your means of knowledge.

II. If in answer to the fourth interrogatory in chief you state the current price of the articles mentioned, please state your means of information, and how the current price is fixed, and whether for actual sales or for estimates. Are there any published accounts of the market? If so, annex those on which you rely. Are the prices named, &c. for the wholesale and the prices? Please state both the wholesale and the retail prices.

III. Do you know of anything further that can be of aid to the respondents? If so, please state the same.

HUNTON & BRADFORD,
for Respondents.

I certify that the foregoing interrogatories and cross-interrogatories were by me propounded to the witnesses, Wm. P. Holloway,

Wm. Hutchinson, and J. B. Harvey, their answers to which on oath are herewith returned.

March 29, 1853. JAS. A. MAXWELL,
Comm.

U. S. D. C.

W. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE and owners.

Interrogatories to be propounded to G. W. Smith, Wm. S. Wilson, and William Sillers, material witnesses for libellants, and residing at Grand Gulf, Miss.:—

1st. What is your profession or occupation?

2d. Did you witness the collision between the Southern Belle and a flat-boat at the landing at Grand Gulf, about the 3d January last? and if so, say where you were at the time, and how you happened to be there.

3d. At what hour did the collision occur? Was it clear or foggy? Light or dark? Was there or not sufficient light to see the flat-boat, and how far off could she be seen in the light then existing? Did you or not see her distinctly, and how far off were you at the time?

4th. State the circumstances of the collision as fully and particularly as your memory will permit.

5th. State all else within your knowledge of benefit to libellants.

BENJAMIN & MICOU,
Proctors.

Cross-Interrogatories.

I. If you state that you witnessed the collision referred to, please state whether the wind was then blowing light or strong, and in what direction. Was or was there not another boat then lying at the wharf-boat, and if a boat was then at the wharf-boat please state her name. Under the circumstances, was it in your opinion practicable and safe for the "Southern Belle" to effect a landing on the outside of said boat?

II. Were there or were there not torches lighted on board of the "Southern Belle" at the time of her landing at Grand Gulf?

III. Is not the portion of the part of landing at Grand Gulf, which is immediate and below the wharf-boat, known as the cotton landing? What is the extent of the said "cotton landing?" Do not steamboats frequently come in at the cotton landing, both ascending and descending? Is it usual for flat-boats to lie at the cotton landing?

Is there any law or ordinance for the regulation of the landing places of boats of different classes at Grand Gulf? If so, please state whether you have a copy, and if so annex it. Is the said law or ordinance now regularly enforced and observed, or has it fallen into neglect and disuse?

IV. Do you know of anything further that can be of advantage to the respondents? If so, please state the same.

HUNTON & BRADFORD,
for Respondents.

I certify that the foregoing interrogatories and cross-interrogatories were propounded to Geo. W. Smith, Sam. Armitage, and Isydore Strauss, and their answers thereto on oath are herewith returned.

JAS. A. MAXWELL.

March 29, 1853.

U. S. D. C.

W. B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE.

Interrogatories to be propounded to Quincy A. French, and C. Sheldon, and John W. Hughes, witnesses material for libellants, and residents of Grand Gulf, Miss.

1st. What is your profession or occupation?

2d. Do you know anything of a flat-boat struck by the Southern Belle about the 3d January last?

3d. Were you present at any accident occurring to the same flat-boat on the evening preceding her sinking?

4th. Did you assist in repairing the damage caused by this accident? What was the extent of the damage? Was it or not fully repaired?

5th. What was the condition of the boat when you left her that night? Was she safe or not?

6th. State all else within your knowledge of benefit to libellants as if more particularly interrogated.

BENJAMIN & MICOU,
for Libellants.

Cross-Interrogatories.

I. Are you acquainted with the port of Grand Gulf? If so, please state whether the portion of the landing which lies immediately below the wharf-boat is not known as the "Cotton Landing." How far does the "Cotton Landing" extend below the wharf-boat? Is it not usual for steamboats to come in at the "Cotton Landing," both ascending and descending? Is it usual for flat-boats to lie at the place so known as the Cotton Landing?

II. Is there any law or ordinance for the division and regulation of the port of Grand Gulf? If so, state the date of its enactment and annex a copy thereof, or state why you do not annex said copy.

Do you know of any copies of said law or ordinance in print? Has the said law or ordinance been regularly observed and enforced, or has it fallen into disuse and neglect?

III. Do you know of anything further that can be of aid and advantage to the respondents? If so, please state the same.

HUNTON & BRADFORD,
for Respondents.

I certify that the foregoing interrogatories and cross-interrogatories were propounded to the witness, S. Sheldon, his answers to which on oath are herewith returned.

JAS. A. MAXWELL,
March 29, 1853. *Comm'r.*

This is the diagram referred to in my deposition.

JNO. BUCKINGHAM,
C. CONKLIN,
J. W. CHAMPLIN.

[For map see original, page 43.]

The squares are 300 feet long.

The point marked on diagram * was the lower corner of Rundell's wharf, which has fallen into the river.

Exhibit (*A*), by the undersigned shown to the witnesses, whose names are therein written by them.

JAS. A. MAXWELL,
Comm'r.

Exhibit B.

Ordinance of the Town of Grand Gulf.

An ordinance to amend an ordinance relating to the division of the landing, and the duties of harbor master. Passed March 11, 1837.

Be it ordained by the President and Selectmen of the town of Grand Gulf, in general meeting convened, that from and immediately after the passage of this ordinance, in order to prevent confusion in the harbor, the harbor master shall proceed to divide the landing in following manner, viz:—

The steamboat landing shall extend from the lower corner of Church street to the lower corner of Rundell's wharf.

The keel-boat landing shall extend from the lower corner of Church street to the upper corner of Main street. This division to be used exclusively by keel-boats in discharging and receiving freight.

The flat-boat landing, to be designated as No. 1, shall extend from the upper corner of Main street to the lower corner of Eddy street; and the division to be designated as No. 2, shall extend from the lower corner of Rundell's wharf to the terminating line of the corporation limits.

4th. It shall be the duty of the harbor master, as soon as a flat-

boat lands, to demand the sum of two dollars from the owner or owners, or from the person or persons having it in charge, giving the privilege to said boat to remain at the landing for the term of eight days; and after the expiration of eight days it shall be his duty to collect from every such boat lying at the landings, the sum of fifty cents per day for each and every day said boat shall remain.

5th. It shall be the duty of the harbor master to collect from any boat retailing groceries, or merchandise of any kind, the sum of one dollar per day for each and every day said boat shall continue at the landing; and said boat or boats shall pay, upon landing, the sum of ten dollars, with privilege of remaining during ten days, and one dollar per day for every day they remain thereafter. *Provided*, that no boat shall remain at the landing for a longer term than thirty days, under a penalty of five dollars per day for such remainder.

Sec. 6. And be it further ordained, that all steamboats landing at the wharf shall be subject to a tax of two dollars, to be collected by the harbor master.

Sec. 7. And be it further ordained, that no spirit. liquors shall be retailed on board of any flat-boat, or any other description of boat, within this corporation, under a penalty of five dollars for every such offence, to be collected as other fines and penalties under the ordinance of this corporation.

Sec. 8. And be it further ordained, that immediately after the publication of this ordinance, it shall be the duty of the harbor master to have removed, with all practicable despatch, the flat-boats now occupying the division allotted to the keel-boats; and that all those neglecting or refusing to vacate this division, in pursuance of this ordinance, shall be subject to a fine of ten dollars for every day they may remain.

Ordained and published this sixth day of February, 1838.

W. M. SMYTH,
President.

A. A. GREEN,
Clerk.

Note.—The following signatures and certificate appear on the margin of said ordinance.

JNO. BUCKINGHAM, J. W. CHAMPLIN,
S. SHELDON, E. CONKLIN.

Exhibit *B*, with the testimony of the witnesses whose names are signed thereon.

JAS. A. MAXWELL,
Comm'r.

Exhibit C.

Be it remembered, that at a meeting of the President and Selectmen of the town of Grand Gulf, held at the council chamber in Grand Gulf, State of Mississippi, on the 7th day of March, A. D. 1853, among other things resolved was the following, to wit:—

"On motion, *Resolved*, that the steamboat landing be extended from its present limits to the upper edge of Main street."

I, the undersigned, Clerk of the Board of Selectmen of the town of Grand Gulf, do hereby certify that the above is a true copy from the minutes of said Board of the ordinance extending the steamboat landing.

Given under my hand and the common seal of the said corporation this 18th March, 1853.

L. F. F. FRINK,
Cl'k of the Board of Selectmen of the Town of Grand Gulf.

I, the undersigned President of the Board of Selectmen of the Town of Grand Gulf, do certify that L. F. Frink, whose genuine signature appears to the above certificate, was Clerk of said Board on the 18th March, 1853, and that full faith and credit are due to his official acts, and that I have caused the said common seal to be affixed above by him.

March 18th, 1853.

J. WM. CHAMPLIN,
President Board Selectmen of Grand Gulf, Miss.

This is the paper marked exhibit *C*, as referred to in my deposition.

JOHN BUCKINGHAM,
S. SHELDEN.

Depositions.

DISTRICT COURT OF THE UNITED STATES,
Eastern District of Louisiana:

WILLIAM B. CULBERTSON, Libellant,
vs.
Of STEAMBOAT SOUTHERN BELLE, Claimants.

In Admiralty in said Court.

The Depositions of Joseph W. Champlin, Wm. P. Holloway, and others hereinafter named, witnesses on the part of the Libellant, produced and sworn before James A. Maxwell, Commissioner of said Court, and taken at the Office of said Commissioner at Grand Gulf, Mississippi, in pursuance of a Commission from said Court, and herewith returned.

And the said Joseph W. Champlin having appeared, and after having been by me, Commissioner as aforesaid, duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, within his knowledge, in answer to the several interrogatories and cross-interrogatories propounded to him, on oath as aforesaid says in answer:

To Interrogatory 1. My profession and occupation is that of a merchant, and I am engaged in selling merchandise in Grand Gulf, Miss'p. I hold an office therein. I am President of the Selectmen of the Corporation of Grand Gulf. I have held that office for 12 months and a few days last past.

To Interrogatory 2d. The landings for the different classes of boats in the town of Grand Gulf are assigned by ordinance of the President and Selectmen of the Corporation of Grand Gulf. The ordin'ce in force up to March 7, 1853, is dated, or *or* was ordained and published the 6th day of February, 1838.

To Interrogatory 3d. I do not now remember particularly where the wharf-boat lay on or about the 3d day of January, 1853; but according to the best of my recollection, it was lying opposite to the Square between Church and Chesnut Streets, of Grand Gulf; I do not now remember that I ever saw the wharf-boat lying below Chesnut Street of Grand Gulf.

To Interrogatory 4. I have no distinct recollection of the locality of Rundell's old wharf, but think it commenced at the lower side of Chesnut Street and extended down. There is no part of that wharf now remaining. It has long since caved in and been washed away. It was nearest to Chesnut Street, and immediately below, as already stated.

JA'S A. MAXWELL,
Comm.

To Interrogatory 5th. There are two flat-boat landings at Grand Gulf. There is one below the wharf-boat. The lower flat-boat landing begins about 80 or 100 feet below where the wharf-boat was on January 3d, 1853, as near as I can judge from observation, having never measured the distance.

To Interrogatory 6th. I answer that I have no distinct recollection whether the wharf-boat was at her usual place in January 3d, 1853, nor whether she had lower down.

To Interrogatory 7. I answer that I have no knowledge of the flat-boat alleged to have been sunk by the Southern Belle on or about January 3d, 1853, or at any other time; nor do I know anything about the flat-boat, or her position at the time.

To Interrogatory 8. I answer that I neither measured nor assisted to measure the distance; and I have no information on the subject.

To Interrogatory 9. I answer that I do not know at what landing

the flat-boat was lying at the time of the collision, nor between what streets, nor whether below Rundell's wharf.

To Interrogatory 10. I have no knowledge whether a berth had been assigned to said flat-boat by any one, and I know of no circumstance connected with that matter.

To Interrogatory 11. As requested, I herewith annex a diagram, marked exhibit *A*, and upon which I have written my name, showing the steamboat landing, a part of flat-boat landing, No. 2. I do not know and cannot state whether said diagram truly represents the places where the wharf-boat and the flat-boat were lying at the time of the collision.

To Interrogatory 12. I answer that nothing further to the benefit of libellants now occurs to me more than what I have already stated.

To Cross-interrogatory 1. As requested, I refer to and annex as part of my answer hereto, a printed copy of the ordinance, assigning to the different classes of boats their landing-places, said copy being marked exhibit *B*, and upon which, at page 11, I have written my name. There are printed copies of the ordinance to be procured, nor can I state whether said ordinance has been regularly or constantly enforced, or whether it has fallen into neglect or disuse. There has been a harbor master elected regularly for three or four years last past, probably longer, and I have paid no particular attention to the matter.

To Cross-interrogatory 2*d*. There is no portion of the landing at Grand Gulf designated by the ordinances as the "Cotton Landing." That portion of the landing at which steamboats land and take on cotton, is popularly called and known as the "Cotton Landing." I have no definite idea of the extent of the cotton landing; it has changed from place to place frequently. It is usual for steamboats both ascending and descending to come in at the cotton landing, which I consider the same as the steamboat landing in Jan'y last. I do not know whether it is usual for flat-boats to moor at the place known as the cotton landing.

To Cross-interrogatory 3*d*. Having stated that there is more than one flat-boat landing in the port of Grand Gulf, I now state the position and extent of the two flat-boat landings as follows, to wit:— Flat-boat landing No. 1 extends from the upper corner of Main Street to the lower corner of Eddy Street in Grand Gulf. Flat-boat landing No. 2 extends from the lower corner of Rundell's wharf to the terminating line of the Corporation limits, about half a mile or more below the upper limit of said landing. Those landings were fixed by law or ordinance of the President and Selectmen of the Corporation of Grand Gulf, to wit: the ordinance, exhibit (*B*). The lower flat-boat landing as No. 2, is that most used by flat-boats so far as I know or have observed.

To Cross-interrogatory 4. I answer that I have no recollection or knowledge whether the wharf-boat had been moved in any way, and

if moved, for what reason, nor how far, nor when, nor whether she was there lying in the position allowed to her by the laws and ordinances of the port.

To Cross-interrogatory 5. I answer that I have no knowledge of the position of the wharf-boat at the time of the collision.

To Cross-interrogatory 6*th*. I answer that nothing further that can be of benefit to the respondents now occurs to me.

J. WM. CHAMPLIN.

Sworn and subscribed before me, March 17, 1853.

JAS. A. MAXWELL,
Comm'r.

William P. Holloway, a witness for the libellants, having appeared and having been by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories propounded to him on oath as aforesaid, answers and says:—

To Interrogatory 1. I am a merchant, and am engaged in buying and selling produce, groceries, &c., at Grand Gulf; and in receiving and forwarding cotton and other merchandise in the town of Grand Gulf; and have been so engaged for the last ten years in said town.

To Interrogatory 2. I do know something of a flat-boat being struck by the Southern Belle, at the landing at Grand Gulf, about January 3d last. My means of knowledge are that I went from my house to the place where the Southern Belle was lying, and there I saw the wreck of a flat-boat which had been staved or crushed by the Southern Belle a few moments before. The wreck of the flat-boat was lying in the flat-boat landing.

To Interrogatory 3. I have no knowledge of what the cargo of the flat-boat consisted, or of its value.

To Interrogatory 4. The current price (on January 3d, 1853) at Grand Gulf, stoneware per gallon, was worth from 8 to 10 cts. per gallon for all sizes from one gallon upwards; for half-gallon and quart jugs, 87½ cents per dozen; onions about $2 50 per barrel; apples from $3 00 to $4 00 per barrel; potatoes $1 25 to $1 50 per barrel; corn 50 cents per bushel in sacks, or 40 cents per bushel in bulk. I do not know the value of this partnership: flat-boats usually sell at Grand Gulf for $1 00 per foot; and skiffs from $5 00 to $10 00, according to quality.

To Interrogatory 5. I do not know whether any part of the cargo of the flat-boat was saved, nor anything of the value of the cargo.

To Interrogatory 6. I answer that nothing further now occurs to me of advantage to the libellants.

To Cross-interrogatory 1. I answer that I do not know of what the cargo of said flat-boat consisted, and I have no means of knowledge except from hearsay.

To Cross-interrogatory 2. My means of information of the prices

mentioned in my answer to the 4th direct interrogatory, are derived from a strict knowledge, purchases and sales of similar articles at that time and about that time; and from being in the habit of buying and selling similar articles for several years previous thereto. I fix the prices from actual purchases and sales then and about that time made; there are no published prices of the markets now, nor were they then. The prices by me stated are the wholesale prices. The retail prices were as follows: Stoneware per gallon $1 gallon; upwards 15 to 20 cents per gallon; ½ gallon and quart jugs $1 50 per dozen; onions per barrel $3 50; apples $4 00 per barrel; potatoes $2 00 per barrel; corn 60 cents per bushel; which I paid for retail. As to the retail price of flat-boats and skiffs, I know no difference between retail and wholesale.

To Cross-Interrogatory 3. I know nothing further to the benefit of the respondents.

W. P. HOLLOWAY.

Sworn to and subscribed before me March 17th, 1853.

JAS. A. MAXWELL,
Com'r.

And George W. Smith, a witness for the libellant, having appeared, and having been by me sworn, on oath says in answer—

To Interrogatory 1. My general profession and business has been that of a hotel-keeper, and recently engaged in keeping a hotel in the wharf-boat at Grand Gulf.

To Interrogatory 2d. I answer, that I did witness the collision between the Southern Belle and a flat-boat, at the landing at Grand Gulf, on or about the 3d day of January, 1853. I was at the time standing on the boiler deck of the wharf-boat, which was lying bow down stream at the time. I was at the time the keeper of the hotel in the wharf-boat, and was standing at the place aforesaid, expecting the arrival of the Southern Belle and passengers on her.

To Interrogatory 3d. I cannot state at what hour the collision occurred, but it was just at daylight in the morning. It was clear at the time. It was light enough to see the steamboat half a mile off; it was light enough then to see the flat-boat half way across the river. I could see the opposite shore distinctly. I suppose the river is one mile wide. At the time I saw the flat-boat distinctly, and suppose I was 150 yards off.

To Interrogatory 4th. The circumstances of the collision, according to the best of my recollection, are these: The steamboat Atlantic was lying at the wharf-boat when I saw the Southern Belle coming up the river; there was a very strong northwest wind blowing on shore at the time. The Southern Belle came up, passing the flat-boat, which was afterwards sunk, and came opposite to the Atlantic and stern of the wharf-boat, which was lying stern up stream at the time, and the Southern was then about 30 yards out in the

river from the outside of the Atlantic, and, as I supposed, with the intention of landing alongside of the Atlantic. I think there was at the time a flat-boat lying tied up at the bank, a short distance above the stern of the wharf-boat. I consider, from what I saw, that the Southern Belle could, by keeping on her steam, have effected a landing above the wharf-boat. The landing above the wharf-boat for 300 yards is as good for a steamboat to land at as it is below the wharf-boat. When the Southern Belle was opposite to the wharf-boat, in the position as above stated, she commenced backing her wheels, and backed down very fast, with the intention, as I thought, of landing under the bow of the wharf-boat. Just about the time she cleared stern of the Atlantic, a sudden flaw of wind struck her, careened her down very much, and in that situation she went upon the flat-boat, and crushed it with the forward part of the boat Southern Belle. There was space enough between the bow of the wharf-boat and the flat-boat for the Southern Belle to have lain without touching the flat-boat, if she had effected the landing at the point intended by her, as it appeared to me from my observation of the manœuvering of the boat. When the Southern Belle struck the flat-boat, the flat-boat sunk immediately to the roof. The Southern Belle run out her stage over the wreck of the flat-boat, and there made her landing.

In answer to the 5th Interrogatory. It being suggested that it would be to the interest of the libellants, I state further, that I am acquainted with Quincy A. French, and have been for some years past; that he has been in the habit of intoxication and drinking to excess, and that said habit was in him at the time of said collision. I have rarely seen him entirely clear from the effects of liquor during the last 12 months. There is but one person of the name of Quincy A. French residing at Grand Gulf, that I ever heard of.

To Cross-Interrogatory 1. The wind, at the time of the collision, was blowing very strong on shore from northwest. The steamboat Atlantic was lying at the wharf-boat at the time of the collision. I do not consider that it was safe at the time for the Southern Belle to have landed alongside the Atlantic. It may have been practicable, but I think some damage would have been done to one or both of the boats.

To Cross-Interrogatory 2d. I saw a torchlight on the Southern Belle at the time of her landing at Grand Gulf.

To Cross-Interrogatory 3d. The portion of the port or landing at Grand Gulf known as the "Cotton Landing," was not immediately below the wharf-boat, but the wharf-boat, at the time of the collision, was lying at what was then known as the Cotton Landing, the same having been fenced in to keep the cattle from eating the cotton placed on the bank for shipment. The lower fence of the Cotton Landing was located about 70 feet above, or up stream from the lower edge of Chestnut street in Grand Gulf, and extended up stream from that point about 270 feet. Steamboats, both ascending

and descending, come in and land at the Cotton Landing. It is not usual for flat-boats to lie at the Cotton Landing; but the flat-boat which was struck by the Southern Belle, as above stated in answer to the 4th interrogatory, was lying, at the time of the collision, about 150 yards below the Cotton Landing. I have understood that there are laws and ordinances regulating the landings of boats of different classes at Grand Gulf. I do not remember that I ever saw the ordinanee, and have no copy to annex. I have no knowledge whether said ordinances have been enforced or fallen into disuse. I have never been an officer of the corporation, and have paid no attention to these matters. If those laws and ordinances have been strictly enforced within the last three or four years, I have not observed it.

To Cross-Interrogatory 4. I know nothing further to the advantage of the Southern Belle.

GEO. W. SMITH.

Sworn and subscribed before me March 17th, 1853.

JAS. A. MAXWELL,
Comm'r.

And Elijah Conklin, a witness for the libellants, having appeared, and, having been by me duly and legally sworn, on oath answers and says:—

In answer to Interrogatory 1. My profession or trade is that of a gunsmith. I hold in the town of Grand Gulf the office of Justice of the Peace, and hold *the office of Justice of the Peace, and hold* the office of Harbor Master of the port of Grand Gulf for the last six years, and until March 7, 1853.

To Interrogatory 2d. The different landings of the port of Grand Gulf are assigned by ordinance of the President and Selectmen of the town of Grand Gulf. I do not recollect the date of the ordinance, but it was before the year 1840. A printed copy of the ordinance now in force being shown to me, I find the same bears date February 6, 1838; this is the ordinance in force from the date thereof until the 7th day of the present month.

To Interrogatory 3d. I answer and state that I know where the wharf-boat lay on or about the 3d day of January last, 1853. I was absent some four or five days and returned on the 5th of January, 1853, and found the wharf-boat occupying the same position that she did before I left home. Said wharf-boat was then lying bow down stream with her bow about 6 feet above the lower side of Chesnut Street in Grand Gulf.

To Interrogatory 4th. I know but one Rundell's wharf at Grand Gulf; that wharf commenced at the lower edge or side of Chesnut Street, and extended up stream to Whiteman's wharf. That wharf, Rundell's, was about 50 or 60 feet long. No part of Rundell's

wharf is now remaining. About one year ago there were a few posts left.

To Interrogatory 5th. I answer that there are two flat-boat landings at Grand Gulf. There is a flat-boat landing below the wharf-boat; the flat-boat landing begins about 60 feet below the point where the wharf-boat lay at the time of the collision as alleged.

To Interrogatory 6th. I answer previous to the 28th or 30th day of December, 1852, the wharf-boat had been lying above Church Street; on or about the 30th day of December, 1852, she moved down about 300 feet to the Cotton Landing, as generally known. I was absent until the 5th day of January, 1853, and on my return I found the wharf-boat occupying the same position.

To Interrogatory 7. I answer that I did not see the Southern Belle sink the flat-boat, but on my return as aforesaid, on January 5th, 1852, I saw the wreck of the flat-boat lying moored and floating at the flat-boat landing, moored by two or three lines tied to a stump on the bank. The wreck lay 270 feet below the upper end of the flat-boat landing, and about 330 feet below the wharf-boat.

Interrogatory 8th. I answer that I measured the distance with a tape line.

To Interrogatory 9. As before stated, on my return I found the wreck of the flat-boat lying at the flat-boat landing, about 270 feet below the point where Rundell's wharf was, and between Chesnut and Cedar Streets, and within 30 feet of Cedar Street.

To Interrogatory 10th. I answer that I do not know whether any berth had been assigned to said flat-boat by any one; the wreck was known in the proper flat-boat landing.

To Interrogatory 11. A diagram, marked (*A*), is now presented to me, which I have carefully examined, and the same truly represents the flat-boats and *and* steamboat landing, and the streets and squares in Grand Gulf therein named. The point marked * at the end of a dotted line, denotes the point where the lower end of Rundell's wharf was while it remained; and I believe that the wharf-boat and the flat-boat were lying at the points designated in said diagram.

To Interrogatory 12. It being suggested to me that it will be material to the interest of the libellants, I state further that I have known Quincy A. French, a witness in this cause, for some time, and that for the last twelve months he has been in the habits of intoxication more or less all the time. On the day before the deposition of said French was taken for the respondents, said French told me that Captain White, of the Southern Belle, had offered him one hundred dollars to go to New Orleans to testify for him; that he knew all about the boat, and that if Captain White would give him two hundred dollars he would go down and clear him. At the time of said conversation said French was very much intoxicated, as usual.

To Cross-interrogatory 1. In answer to this interrogatory and as requested, I hereunto annex a pamphlet, marked exhibit *B*, and on page 11 my name written thereon. Printed copies of said ordinance

can be procured at Grand Gulf. The ordinance is in print; the original ordinance contained in the minutes of the Present and Selectmen of the town of Grand Gulf, with the books, papers, &c., were destroyed by fire at Grand Gulf in April, 1851. I have been Harbor-master of the port of Grand Gulf for six years past and until March 7, 1853, during all which time said ordinance has been regularly enforced in all cases coming within my knowledge; and I have frequently been applied to by S. Shelden, the master of the wharf-boat, to enforce the ordinance against flat-boats landing in the steamboat landing.

To Cross-interrogatory 2d. I answer that there is a portion of the landing at Grand Gulf, popularly known as the "Cotton Landing." The Cotton Landing extends about 270 feet, commencing at the upper side of Chesnut Street, and extending up stream towards Church Street, as represented in the diagram, exhibit (*A*). This landing was fenced in to keep the cattle from the cotton, and before the wharf-boat moved down to the Cotton Landing, it was usual for steamboats, both ascending and descending, to come in and land thereat. It is not usual for flat-boats to moor at the place called the Cotton Landing.

To Cross-Interrogatory 3d. The lower flat-boat landing, No. 2, commences at the lower side of Chesnut Street, at the point indicated thus * on diagram, exhibit (*A*), and extends down stream something more than half a mile, to the lower limit of the corporation of Grand Gulf. The upper flat-boat landing, No. 1, commences at the upper corner of Main Street, which is the street next above and running parallel with Church Street, as represented in said diagram, exhibit (*A*), thence running up stream to the lower corner of Eddy Street, a distance of about 300 feet. These landings are fixed by the ordinance hereinbefore referred to as exhibit (*B*). The lower flat-boat landing, No. 2, is the most used, and almost exclusively used by flat-boats.

To Cross-Interrogatory 4. The wharf-boat had been moved down stream about 300 feet about the 28th or 30th of December, 1852. The reason of her removal was, so far as I know, to get in to her proper landing, being the landing designated by the ordinance for steamboats. I believe the wharf-boat was at the time lying in the position allowed to her by the ordinances and usages of the port.

To Cross-Interrogatory 5. As before stated, I did not see the collision between the Southern Belle and the flat-boat; but the wreck of the flat-boat that I found at the landing moored to the bank as before stated, was not in the Cotton Landing but was in the flat-boat landing, below the Cotton Landing. It is usual for steamboats to come in at the Cotton Landing.

To Cross-Interrogotory 6. I answer that I know nothing else to the advantage of the respondents.

To additional Interrogatory 1. I am not now harbor-master of Grand Gulf, but was for six years and up to the 7th day of this month. There was no salary attached to the office.

To add'l Interrogatory 2. I answer that during the time that I

was in office, the laws and ordinances regulating the landing and the division of the port of Grand Gulf, were enforced by me in all cases that came under my knowledge. I have frequently been called in by S. Shelden, the master of the wharf-boat, and the merchants of the town, to enforce the ordinance in relation to the landings, and within the last year, and have invariably done so when called in. And whenever I have observed flat-boats landing in the steamboat landing, I have informed the persons in charge that they were not in the proper landing, and directed them to the flat-boat landing.

To additional Cross-Interrogatory 3. The portion of the landing immediately below and adjoining the wharf-boat, is not known as the Cotton Landing. The Cotton Landing extends from the upper side of Chesnut Street, as laid down on diagram, exhibit (*A*), and extends up stream about 270 feet. This portion of the landing was fenced in as the Cotton Landing. Steamboats ascending and descending come in at the "Cotton Landing." The Southern Belle is a regular packet. She usually arrives at Grand Gulf, ascending, on Monday morning at from 12 o'clock A. M. to 5 o'clock A. M., and sometimes as late as 8 o'clock A. M. She usually stops at Grand Gulf. The Southern Belle frequently comes in at the Cotton Landing. I never did object to the Southern Belle landing at the Cotton Landing, as that was the proper steamboat landing.

To additional Cross-interrogatory 4th. There are some 15 or 20 copies of the ordinances regulating the landings at Grand Gulf in print within my knowledge, and I know of no others; I know that an edition was published in 1838, and I have heard that some have been printed and published since. On the 7th of March, 1853, the Board of Selectmen passed an ordinance extending the steamboat landing about 300 hundred feet further up stream than heretofore.

To add'l Interrogatory 5. I know nothing further.

E. CONKLIN.

Sworn to and subscribed before me March 17, 1853.

JAS. A. MAXWELL,
Comm'r.

And Samuel Armitage, a witness for the libellant, residing in Port Gibson Mississippi, having appeared, and having been first by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth within his knowledge, to the interrogatories and cross-interrogatories propounded to Geo. W. Smith, W. S. Wilson and William Sellers, and now propounded to this witness, Armitage, on oath as aforesaid, says in answer:—

To Interrogatory 1. My occupation is that of a tailor.

To Interrogatory 2d. I did witness the collision alluded to in this interrogatory; I was at the time of the collision standing on the

boiler deck of the wharf-boat at Grand Gulf; I was in my way to Vicksburgh from Port Gibson, and was waiting on the wharf-boat to take Southern Belle to go to Vicksburgh.

To Interrogatory 3d. I cannot state the hour of the collision; but it was about daylight; it was clear, and not foggy; it was bright enough to see across the river; it was light enough to see the flat-boat; I saw the flat-boat from the wharf-boat. The flat-boat could have at the time been seen a quarter of a mile or more; in the light then existing, I saw the flat-boat distinctly: at the time I was 100 or 150 yards—certainly 100 yards from the flat-boat.

To Interrogatory 4th. I first saw the light of the Southern Belle, that morning, when she was at the point below Grand Gulf, above 4 miles off as I suppose. I observed her occasionally until she approached Grand Gulf, when she came to about three-quarters of a mile from the place where I was: I could see the steamboat distinctly; she came up passing the flat-boat, which was afterwards sunk by her, within 50 yards of the flat-boat in passing her to opposite, or nearly opposite to the wharf-boat on which I was, as if to land on the outside of the steamboat Atlantic, which was then lying alongside the wharf-boat: thinking that the Southern Belle was about to land alongside of the Atlantic I went down the steps of the wharf-boat to the main deck, to cross the steamboat Atlantic, and get on the Southern Belle; but when I got nearly down to the main deck of the wharf-boat, I discovered that the Southern Belle was backing and going down stream stern foremost: I immediately ascended the steps of the wharf-boat to the boiler deck of the wharf-boat; and instantly on getting up there, I heard Mr. Geo. W. Smith exclaim, "I'll be damned if she don't crush the flat-boat after all." On hearing which I cast my eyes down to the flat-boat; the Southern Belle was then very near her, and almost instantly struck and crushed the flat-boat, the forward part of the steamboat, say within 30 feet of her bow, striking the flat-boat; the Southern Belle then ran out her staging over the wreck of the flat-boat, and made her landing there; I soon after went aboard of the Southern Belle, passing on the stage, which was over the wreck of the flat-boat. At the time of the collision, there was space sufficient between the lower end of the wharf-boat and the upper end of the flat-boat, for the Southern Belle to have lain without touching either boat, and I suppose some room to spare.

To Interrogatory 5th. I answer that I know nothing further to the benefit of the libellant, W. B. Culbertson.

To Cross-interrogatory 1st. At the time of the collision, the wind was blowing pretty strong on shore from northwest, or thereabouts. The steamboat Atlantic was at the time, lying alongside the wharf-boat. I am not sufficiently acquainted with the management of steamboats to state whether under the circumstances, it was safe and practicable for the Southern Belle to effect a landing on the outside of the Atlantic.

Cross-interrogatory 2d. I saw one torch lighted on board the Southern Belle.

To Cross-interrogatory 4th. I know nothing further to the benefit or advantage of the claimants.

To Cross-interrogatory 3d. I know nothing of the several matters embraced in this interrogatory.

SAMUEL ARMITAGE.

Sworn to and subscribed before me March 17, 1853.

JAMES A. MAXWELL,
Comm'r.

John Buckingham, a witness for the libellants, having appeared, and after having been by me first duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth within his knowledge, in answer to the several interrogatories and cross-interrogatories propounded to him, on oath as aforesaid, answers and says:—

To Interrogatory 1. My profession is that of a merchant, and I am occupied in selling goods in Grand Gulf, Missp.; I hold no office in the town of Grand Gulf: I held the office of Clerk of the Corporation of Grand Gulf for one year, next preceding the 7th of March, 1853.

To Interrogatory 2. The landings for the different classes of boats in said town, are assigned by ordinance: the date of the ordinance regulating the flat-boat landings now in force is February 6th, 1838. The steamboat landing has been recently extended up stream so as to include what was heretofore the keel-boat landing, as assigned by the ordinances of 1838.

To Interrogatory 3d. I know about what place the wharf-boat lay, on or about the 3d day of January, 1853. She lay at the landing between Chesnut and Church streets, in Grand Gulf, and nearest to Chesnut Street.

To Interrogatory 4. I have no knowledge of the location of Rundell's old wharf.

To Interrogatory 5. There are two flat-boat landings at the port of Grand Gulf. There is a flat-boat landing below where the wharf-boat now lies and below where she was lying on the 3d of January last. The lower flat-boat landing begins about 60 or 80 feet below where the wharf-boat lay on the 3d day of January last.

To Interrogatory 6th. The wharf-boat was not in her usual place on the 3d of January of 1853, but she had dropped down about 300 feet, and was then, on January 3d, 1853, in the proper steamboat landing.

To Interrogatory 7th. I have no knowledge of the flat-boat aforesaid, nor of the collision.

To Interrogatory 8th. I did not measure the distances, nor assist therein.

To Interrogatory 9. I do not know.

To Interrogatory 10. I do not know.

To Interrogatory 11. The diagram marked exhibit (*A*), upon which my signature is written, and now shown me, and which I have examined, exhibits truly the position of the streets and squares, and Mississippi River, the flat-boat landing No. 2, which commences at the point on the diagram, designated thus *, at the end of a dotted line, and extends down stream to the lower limit of the Corporation more than half a mile. The diagram also exhibits the steamboat landing at Grand Gulf, commencing at the point indicated thus *, at the end of a dotted line, and extending up stream to the lower corner of Church street, and on March 7, 1853, was extended up stream one square further, by ordinance of the Corporation. The diagram also shows the position of the wharf-boat on January 3d, 1853, at the point at which the words "wharf-boat here" are written: I do not know where the *the* flat-boat was lying at the time.

To Interrogatory 12th. It being suggested to me that it would be of advantage to the libellant, I state that I have known Quincy A. French, a witness in this case, for more than 12 months last past, and state that he has been a habitual drinker, aad in the habit of drinking spirituous liquors to excess during all that time.

To Cross-Interrogatory 1. As requested, I hereto annex a printed copy of the ordinance alluded to regulating the different landings of the port of Grand Gulf up to the 7th of March, 1853. There are printed copies of said ordinance to be procured, and the same is in print. On March 7th, 1853, an ordinance was passed extending the steamboat landing; that ordinance is not in print, and I annex as a part of my answer a certified copy thereof, marked exhibit (*C*), with my name written therein. So far as I have observed, the printed ordinances regulating the landings at Grand Gulf have not been regularly enforced. I know that the Selectmen in 1853 and in 1852, and believe many years previous, have appointed a harbour master for the *the* Port of Grand Gulf.

To Cross-Interrogatory 2d. I know no portion of the landing at Grand Gulf that is properly known as the "Cotton landing," and have no further answer to make to this interrogatory.

To Cross-Interrogatory 3. There are two flat-boats landings at the Port of Grand Gulf; they are fixed by the ordinance hereinbefore referred to as exhibit (*B*), to which I refer for a particular location thereof, and to the diagram, exhibit (*A*), to show the upper limit of the lower flat-boat landing. Main street, named in the ordinance as the lower limit of flat-boat landing, No. 1, lies three hundred feet Northeast, and above, and runs parallel with the Church street, as represented in diagram, exhibit (*A*). The lower flat-boat landing is the one most used.

To Cross-Interrogatory 4. The wharf-boat was moved down stream about 300 feet, for what reason I do not know; the change of position was made about January 1, 1853. The wharf-boat at the time re-

ferred to, January 3, 1853, was lying on the steamboat landing and in the place assigned to her by the ordinance of the Selectmen of the town of Grand Gulf, renting the steamboat landing for the use of the wharf-boat.

To Cross-Interrogatory 5th. I know nothing of the position of the flat-boat, or of the cotton landing.

To Cross-Interrogatory 6th. I know nothing further that can be of aid to the respondents.

JNO. BUCKINGHAM.

Sworn to and subscribed before me March 18, 1853.

JAS. A. MAXWELL,
Comm'r.

And William Hutchinson, a witness for the libellants, having appeared, and after being first duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, within his knowledge, in answer to the several interrogatories and cross-interrogatories propounded to him, on oath, as aforesaid, answers and says in answer:—

To Interrogatory 1. My profession is that of a commission merchant; I am engaged as such, and in buying and selling produce, groceries, &c.

To Interrogatory 2. I have no knowledge of the Southern Belle having sunk the flat-boat.

To Interrogatory 3. I have no knowledge of the cargo of said flat-boat.

To Interrogatory 4. On or about the 3d day of January last the current prices at Grand Gulf were as follows: For jugs, 1 gallon and upwards, 10 cents; for open stoneware, such as pans and jars, 8 cents per gallon; ½ gallon and quart jugs, 87½ cents per dozen; onions per barrel, $2.25 to $2.50; apples from $3 to $4.00 per barrel—they were high and scarce at the time; potatoes, from $1.35 to $1.50 per barrel, containing about 2 bushels; corn I cannot state, but I bought it in the shuck from planters at 40 cents bushel. I don't know the value of that particular flat-boat and skiff, but flat-boats usually sell for $1.00 per foot in length, and skiffs from $5.00 to $10.00.

To Interrogatory 5. I have no knowledge of the matters mentioned herein.

To Interrogatory 6. It being suggested to me that it will be of advantage to the libellants, I state that I know Quincy A. French, one of the witness in this case, and have known him for several years last past, and that his general reputation is that of a habitual drunkard. He has resided in Grand Gulf for more than 12 months last past, and generally, when I have seen him, he was intoxicated. In a casual conversation about 4 or 5 weeks ago said French told

me that he expected to get a situation on board of the Southern Belle.

To Cross-Interrogatory 1. I do not know of what the cargo of the flat-boat consisted.

To Cross-Interrog. 2d. My means of information are that I am engaged, and was then engaged in business as a merchant at Grand Gulf, in the buying and selling of groceries, produce, &c., and have been for some years. The current prices are fixed by me, partly from actual sales made by others, and partly from actual sales made by others in town at the time. There were no published accounts of the market then or since. The prices by me given are the average wholesale prices. The retail prices were about as follows: For stoneware, open ware, 12½ to 15 cents; jugs, from 20 to 25 cents per gallon; half-gallon and quart jugs, $1.50 per dozen; onions, per barrel, $3.50; apples, $4.00 per barrel; potatoes, $1.75 to $2.00 per barrel, containing from 1¾ to 2¼ bushels; corn I do not know. I know no difference between the wholesale and retail prices of flat-boats and skiffs.

To Cross-Interrogatory 3. I know nothing further that be of aid to the respondents.

WM. HUTCHINSON.

Sworn to and subscribed before me March 18, 1853.

JAMES A. MAXWELL,
Comm'r.

And J. B. Havey, a witness for the libellants, having appeared, and after having been by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories propounded to him, on oath, as aforesaid, answers and says:—

To Interrogatory 1. My profession is that of a merchant, and my occupation is that of a Clerk at Grand Gulf.

To Interrogatory 2d. I have no knowledge of the sinking of the flat-boat. I did not see it. I do not remember the precise day on which the boat was sunk; but on one morning, about the 3d of January, 1853, I saw the wreck of a flat-boat floating at the landing, at least 300 feet below the steamboat landing, at the same place at which I saw a flat-boat lying the day before that on which I saw the wreck. This I believe, on information, is the same boat that I saw the day before. In a conversation with the Clerk of the Southern Belle some time after the flat-boat was sunk, he stated to me that he did not deny but that the Southern Belle had sunk the flat-boat. I understood him to refer to and mean the flat-boat of the libellant.

To Interrogatory 3d. I never was aboard of said flat-boat, nor did I see the cargo; but on the day before she was wrecked I went to the flat-boat with a view to ascertain her cargo and to make purchases,

as was my custom, and was answered by those on board of the boat and in charge that the cargo consisted of potatoes, stoneware, onions, apples, &c.

To Interrogatory 4. The current prices at Grand Gulf on and about the 3d of January, 1853, was as follows: For stoneware, per gallon, 10 cents; for half-gallon and quart jugs, 1 dollar per dozen; onions from $2.00 to $2.25 per barrel; apples, $3.50 per barrel; potatoes, $1 45 cents per barrel; corn, 50 cents per bushel. I do not know the value of the flat-boat and skiff. Flat-boats usually sell for $1.00 per foot, and skiffs from $6.00 to $15.00.

To Interrogatory 5. I have no knowledge.

To Interrogatory 6th. I remember nothing further to the benefit of the libellant.

To Cross-Interrogatory 1. I have no other means of knowledge of what the cargo consisted, except as stated in my answer to the 3rd direct interrogatory, except that I saw some apples, potatoes, and stoneware floating about the wreck, which I supposed was a part of the cargo.

To Cross-Interrogatory 2. My means for information as to the prices by me stated are that I know of sales of similar articles made at and about that time, and at those prices, at Grand Gulf: the current prices are fixed by me from my knowledge of actual sales. There are no published accounts of the market then or since: the prices by me fixed and stated, in answer to the 4th interrogatory in chief, are the wholesale prices. The retail prices were as follows: Stoneware per gallon 15 cents; for half gallon and quart jugs $1 50 per dozen; onions per barrel $3 00; apples from $4 00 to $5 50 per barrel; potatoes $2 00 per barrel, containing about 1⅞ bushels; Corn 66⅔ cents per bushel. I know of no difference between the wholesale and retail price of flat-boats and skiffs.

To Cross-Interrogatory 3. I know nothing further to the benefit of the respondents.

J. B. HARVEY.

Sworn to and subscribed before me March 18, 1853.

JAS. A. MAXWELL,
Comm'r.

And *S. Shelden*, a witness for the libellant, having appeared, and having been by me first duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth within his knowledge, to the several direct and cross-interrogatories propounded to him, on oath, as aforesaid, says in answer:—

To Interrogatory 1. I have no profession, and my occupation is that of keeper of the wharf-boat at Grand Gulf.

To Interrogatory 2. I did not see the flat-boat sunk; but, on or about the 3rd of January, 1853, I saw the wreck of a flat-boat lying between the Southern Belle and the bank of the port of Grand Gulf.

This was early in the morning. The Southern Belle was discharging her freight over her staging, which was run out over the wreck of the flat-boat. At the time I first saw the wreck of the flat-boat, and the Southern Belle lying with her staging out over the wreck, the wreck of the flat-boat was from 150 to 200 feet below the lower side of Chesnut Street, which last point is the upper side of the lower flat-boat landing, or No. 2. The wharf-boat was then lying from 20 to 40 feet above the upper side of Chesnut Street, at the proper steamboat landing.

To Interrogatory 3d. I was not at the flat-boat when the accident occurred in the evening before she was sunk. I was on the wharf-boat at the time and heard the crash, and called to know if they wanted assistance; being answered in the affirmative, I immediately went down. It appeared that a drift log had struck the gunwale plank, and the water was running in at the bow of the flat-boat. I assisted in repairing the damages by furnishing tools, oakum, &c., and in handling the lines. When I arrived at the boat she was swinging, and had nearly arrived at the bank, bow down. I considered the extent of the damage trivial or slight; in a short time the damage was repaired, and those on board and assisting reported that the boat was safe. The boat was temporarily repaired. I was not on board of the boat. The boat was pronounced safe by those who had come to render assistance when the damage was done before I left the place where the boat was lying that night. I then went away. I considered the boat safe, or I would not have left.

To Interrogatory 6. I do not recollect anything further to the benefit of the libellant.

To Cross-Interrogatory 1. I am acquainted with the port of Grand Gulf. The portion of the landing which is immediately below the point where the *the* wharf-boat was at the time of the collision is known as the cotton landing: the cotton landing had no definite limit below, but was frequently used for 100 to 250 feet below for the purpose of shipping cotton. This cotton landing was partly in that portion of the port assignated by the ordinance as the flat-boat landing No. 2. It is usual for steamboats both ascending and descending to come in and to land at that portion of the port called the cotton landing. It is not usual for flat-boats now to lie in the cotton landing, although they sometimes do so. They generally drop below, and often stop above.

Interrogatory 2d. I believe there is an ordinance for the division and regulation of the Port of Grand Gulf. The ordinance was passed February 6, 1838, and I annex a copy thereof with my answer, marked exhibit *B*, and upon which I have my name. I also annex, and make part of my answer, a manuscript copy of another ordinance extending the steamboat landing, marked exhibit (*C*), and upon which I have also written my name. I know of but one copy of the ordinance of 1838 in print, to wit, exhibit *B*. The ordinance

of 1838, exhibit *B*, is the ordinance under which I have been acting as wharf-boat master since February, 1848. I have frequently had occasion to refer to and rely on upon said ordinance in my capacity of wharf-boat master, when my right to collect wharfage was disputed. My copy was burnt in the fire at Grand Gulf, in April, 1851, and until the copy, exhibit (*B*), was now produced and shown me, I did not know there was such a copy in existence, although I have been acting under said ordinance up to the present time. The ordinance has been fallen almost entirely into disuse, although some three years ago I called as the harbor master two or three times to remove flat-boats from the steamboat landing.

To Cross-Interrogatory 3. I know nothing further that can be of aid or advantage to the libellants except that the flat-boat was lying in a place where she was liable to be sunk or damaged by rafts. I advised the persons in charge of the flat-boat, on the night that she was damaged by drift, to move down lower where another boat was lying; at the time I gave this advice the flat in the flat-boat landing as designated by the ordinance.

S. SHELDEN.

Sworn to and subscribed before me March 18th, 1853.

JAMES A. MAXWELL,
Comm'r.

And *Isydore Strauss*, a witness for the libellant, having appeared, and after having been by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth, in answer to the interrogatories now exhibited and propounded to him, being the same interrogatories propounded to Geo. W. Smith *et al.*, on oath as aforesaid says in answer to—

Interrogatory 1. I am a merchant, and engaged in selling goods in Port Gibson, Miss., and in buying cotton.

To Interrogatory 2. I did witness the collision between the Southern Belle and the flat-boat at the landing at Grand Gulf, on or about January 3d, 1853. At the time I was on the boiler-deck of the wharf-boat at Grand Gulf, and I was waiting there to take passage on the Southern Belle for Vicksburgh.

To Interrogatory 3. I cannot state the hour at which the collision occurred, but it was about daylight in the morning. It was clear and not foggy. It was light enough for me to see across the river. There was light sufficient to see the flat-boat from where I was, which I judge was about 150 yards. In the light then existing, I think the flat-boat could have been seen a quarter of a mile or more. I did see the flat-boat distinctly, and I was about 150 yards off at the time.

To Interrogatory 4th. The circumstances of the collision were about as follows: I saw the steamboat Southern Belle coming up, and I could see distinctly the form of the boat about two miles below

and observed her particularly as she came up. She came along pretty close to the shore, passing the flat-boat, and came up abreast the Atlantic, at the time lying at the wharf-boat, with the intention, as I thought, of landing alongside the Atlantic. About that time I started to go down, taking my valise, intending to pass over the Atlantic, and to go aboard of the Southern Belle. As I started I discovered the Atlantic pushing out, and the Southern Belle tacking down stream immediately thereafter; the steamboat Southern Belle went upon the flat-boat and crushed her. She sunk instantly to the roof. The Southern Belle then run her stage out over the wreck of the flat-boat, and I passed over the wreck on board the Southern Belle; and as I went over I saw corn, apples, potatoes, and jugs floating about the wreck.

To Interrogatory 5th. I answer that I know nothing further to the benefit of the libellant.

To Cross-Interrogatory 1. At the time of the collision the wind was blowing very strong in shore from northwest. The steamboat Atlantic was lying at the wharf-boat at the time. I have no sufficient knowledge of the management of steamboats to say whether it would have been practicable and safe for the Southern Belle to have landed on the outside of the Atlantic.

To Cross Interrogatory 2. I do not remember whether there were torches lighted on board of the Southern Belle at the time of her landing at Grand Gulf.

To Cross-Interrogatory 3d. As far as I know and have observed there is a part or portion of the landing at Grand Gulf known as the Cotton Landing. It was that portion of the landing that was fenced in, and at which the wharf-boat was lying at the time of the collision. The wharf-boat had been recently moved down. I do not remember the extent of the Cotton Landing, but suppose, from observation, that it was 200 or 250 feet in extent. Steamboats, in descending, often come in at the Cotton Landing, but whether they do so in ascending I do not know. I do not know whether it is usual for flat-boats to lie at the Cotton Landing. I suppose there are laws and ordinances regulating the landing places at Grand Gulf, but have no knowledge on the subject. I have no copy and have never seen one. I do not know anything about the law or its enforcement.

To Cross-Interrogatory 4. I know nothing further to the advantage of the claimants that I now remember.

STRAUSS.

Sworn to and subscribed before me March 29, 1853.

JAS. A. MAXWELL,
Comm'r.

THE STATE OF MISSISSIPPI.

I, James A. Maxwell, Commissioner named in commission issued from the District Court of the United States in and for the Eastern

District of Louisiana, bearing date March 7, 1853, in a certain cause therein pending, wherein William B. Culbertson is libellant, and the owners of the Steamboat Southern Belle are claimants in admiralty, do hereby certify that I have called and caused to come before me, at my office in Grand Gulf, in the county aforesaid, the witnesses, Joseph W. Champlin, William P. Holloway, George W. Smith, Elijah Conklin, Samuel Armitage, John Buckingham, William Hutchinson, John B. Harvey, Simeon Shelden, and Isydore Strauss, and have examined them and each of them on oath touching and concerning the matters and things in said cause in admiralty above stated, and in the interrogatories and cross-interrogatories to them severally and respectively propounded and herewith returned, and that I have taken and reduced to writing their said examinations, which by them severally and respectively sworn to and subscribed before on the days therein named, and contained in the foregoing 46 pages. I send enclosed to said Court, under my hand and seal, together with said commission, interrogatories, cross-interrogatories, and exhibits to examination marked *A*, *B*, and *C*, to be read in evidence on trial of said cause.

Given under my hand and seal, on this 29th day of March, A. D. 1853.

JAMES A. MAXWELL,
Comm'r.

Commissioner's Fees.

For taking and certifying the testimony of 10 witnesses, at $10.00 each, $100.00.

Which the Clerk will please tax.

JAS. A. MAXWELL,
Comm'r.

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE. } No. 6835.

3d. Commission, Interrogatories and Depositions of H. W. Carlow and others, returned by John Harrison, Justice of the Peace, Muskingum County, Ohio, and offered in evidence for lib't Jan'y 30th, 1854.

District Court of the United States,

Holding Session at New Orleans, in and for the Eastern District of Louisiana—To any Judge or Justice of the Peace for the State of Ohio.

Know ye, that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you

call, and cause to come before you, H. W. Carlow, E. Evans, Perry Spangler, McCoy, and Isaac Dillon, named in the accompanying Interrogatories, and them duly examine on oath, touching and concerning certain matters and things in a case now depending in the said Court, wherein Wm. B. Culbertson is libellant and the owners of the Steamboat Southern Belle are respondents, 6835; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this Court, without delay, to be read in evidence on the trial of said cause; and send also this writ, together with the Interrogatories thereto annexed.

Witness the Honorable THEO. H. MCCALEB, Judge of the District Court of the United States, at the City of [SEAL.] New Orleans, this seventeenth day of November, Anno Domini 1853, and the seventy-eighth year of the Independence of the United States of America.

ROB'T M. LUSHER,
D'y Clerk.

For N. R. JENNINGS,
Clerk.

UNITED STATES DISTRICT COURT
for the Eastern District of Louisiana.

WILLIAM B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE.

Interrogatories to be answered by H. W. Carlow, E. Evans, Perry Spangler, ——— McCoy, and Isaac Dillon, witnesses for the libellant, who reside in the County of ———, in the State of Ohio.

1. Where do you reside, and what is your occupation?

2. Have you any knowledge of a voyage of a flat-boat called the Rainbow, fitted out and loaded by William B. Culbertson, in November, 1852, or in the autumn of that year, in the vicinity of Zanesville, destined to New Orleans, for which voyage one D. B. Kent was Master? If yea, please state how you happened to know anything about that voyage.

3. Have you any knowledge of the cargo with which said flat-boat was loaded for that voyage? Please state how you happened to have such information about the cargo.

4. Please look at the statement hereto annexed, and state whether or not it is to your knowledge that the articles therein specified, or any portion of them, were laden on said flat-boat for that voyage. If it is to your knowledge that said articles, or any of them, were laden in said flat-boat, please state which of them, and how much of each kind.

5. Please examine said statement carefully, and state whether or not it is a correct statement of the cargo in said flat-boat for said voyage. If not, please specify wherein it may be incorrect, and how it varies from a correct statement.

6. Have you any knowledge of the purchase of any articles by the libellant, William B. Culbertson, and his lading them on said flat-boat for said voyage? If yea, what and in what quantity? Specify particulary.

7. Have you any knowledge of the lading of any articles on said flat-boat for said voyage by the said Culbertson, which were the produce of his place or farm? If yea, what, and in what quantity? Specify particularly.

8. State all matters within your knowledge going to show with what articles the said boat was laden by the said Culbertson, and how much of each article there was.

9. Was the said Culbertson the sole freighter of said flat-boat for said voyage, or were there other freight? If yea, who were they, and what articles did they put in the flat-boat?

10. Please state whether there was any corn taken on board of said flat-boat for said voyage, and how much? any potatoes, and what quantity? any apples, and what quantity? any stoneware and jugs, and what quantity? and specify any other articles that were put on board of said flat-boat for said trip.

11. Please state whether or not all the articles were laden at the same place, and at what place? If laden at different places, please state where the different articles were put on board.

BENJAMIN, MICOU & FINNEY,
for Libellants.

Statement of a flat-boat load called the Rainbow, belonging to W. B. Culbertson.

2449	gal. stoneware.
66	doz. ½ gals. jugs.
2½	doz. quart do.
12	bushels onions.
50	bbls. apples.
2100	bushels potatoes.
800	do. corn.

Skiff $10 00.

The above is the statement referred to in the 4th and 5th interrogatories.

BENJAMIN, MICOU & FINNEY.

Defendant, reserving all legal objections to the above interrogatories, and the answers thereto, propounds the following cross-interrogatories:—

1st + int'y. Have you any interest in the event of this suit? Had you any interest in any portion of the cargo of the Rainbow on the

voyage above mentioned? If, in what, and to what extent were you interested?

2d + int'y. What portion of the cargo in the statement above was laden on board the Rainbow for the said voyage? Did you see any of it taken on board? If yea, state what you personally know was on board at the time of the departure of the flat-boat from the vicinity of Zanesville.

3d. Did the libellant, W. B. Culbertson, purchase any portion of the cargo with which said flat-boat was laden from you? If so, what did he purchase, and at what price?

4th. Do you know whether it was the intention of Culbertson, at the time he started said flat-boat, to sell out the cargo on the Ohio river along the Mississippi? Did you hear him express his intention as to this, and what was it?

5th. Did you derive any information contained in your answers to the direct and cross-interrogatories above, from W. B. Culbertson or other persons? If so, what did you so derive from others?

HUNTON & BRADFORD,
Att'y.

Affidavit for commission waived. The commission to be executed by any Judge or Justice of the Peace in Ohio, on proof of the official capacity of the Judge that may act will be required.

HUNTON & BRADFORD,
For Defendants.

Com. fee charged taxable at $6 25.

Depositions of witnesses produced and sworn and examined by virtue of the annexed commission, on the tenth day of December, in the year of our Lord eighteen hundred and fifty-three, in the city of Zanesville, in the County of Muskingum, and State of Ohio, before me, John Harrison, a Justice of the Peace within and for the County and State aforesaid, in a certain cause now pending in the District Court of the United States holding sessions at New Orleans in and for the Eastern District of Louisiana, between William B. Culbertson, libellant, and the owners of the Steamboat "Southern Belle," respondents, on the part of the said libellant.

H. W. Carlow, being produced and sworn, answers as follows to the interrogatories propounded to him in this cause:—

Interrogatory 1. Where do you reside, and what is your occupation?

Ans. I reside in Blue Rock Township, Muskingum County, Ohio, and am a farmer.

2. In answer to interrogatory No. 2, on the part of the plaintiff, he answered as follows:—

In the fall of 1852, in November, I know that Wm. B. Culbertson had a flat-boat called the "Rainbow," of which D. H. Kent

was master, and that I assisted in placing on said boat, at a landing in Blue Rock Township, Muskingum County, Ohio, about 15 miles from Zanesville, eight hundred bushels of corn and 30 bushels of apples.

3. In answer to interrogatory No. 3, deponent says: I know that it was loaded with potatoes, stoneware, and the corn and apples above spoken of. I saw the potatoes and stoneware both in the boat. I don't know exactly how many bushels of potatoes there were, but I think and believe, from what I heard from the Captain, that there were 2,100 bushels, and I think, from what I could learn, about 2,000 gallons of stoneware.

4. In answer to interrogatory No. 4, deponent says: I know that I assisted in putting on the 800 bushels of corn therein mentioned, and 30 bbls. of the apples mentioned therein. I saw potatoes in the boat; I suppose the number of bushels mentioned in said statement; and I likewise saw stoneware, but how many gallons I can't say, but suppose 2,000 or more.

5. In answer to interrogatory No. 5, deponent says: I can't state positively as to anything mentioned as to quantity, except the 800 bush. corn and 30 barrels; of the 50 bbls. apples, the potatoes and stoneware I saw, but how much of each I can't tell, but think as I have above answered is correct.

6. In answer to interrogatory No. 6, deponent says: I don't know that he bought anything and put on said boat, except from hearsay. The 800 bushels of corn he grew upon his farm, and 30 barrels of apples.

7. In answer to interrogatory No. 7, deponent says: The 800 bushels of corn and 30 barrels of apples were of the produce of said Culbertson farm.

8. In answer to interrogatory 8, deponent says: I assisted in putting on 800 bush. corn and 30 barrels of apples. I saw potatoes and stoneware both in the boat; a large quantity of each.

9. In answer to interrogatory No. 9, deponent says: Said Culbertson was the sole freighter.

10. In answer to interrogatory No. 10, deponent says: 800 bushels of corn and 30 bushels of apples were put on said boat. How much stoneware and jugs, and how many potatoes I don't know, but a considerable quantity.

11. In answer to interrogatory No. 11, deponent says: I don't know anything as to where any other thing was put on board said boat, except the 800 bush. corn and 30 bbls. apples, which was put on at Blue Rock, Muskingum Co., Ohio. The other articles were put on said boat before the corn spoken of.

In answer to cross-interrogatory No. 1, on the part of def't, deponent says: I have not now nor never had any interest in the cargo of said Rainbow.

2. In answer to cross-interrogatory No. 2, deponent says: I know that there were 800 bush. corn and 30 barrels of apples on board,

for I assisted in putting them on; the stoneware and potatoes I saw, but how many bushels of one and gallons of the other I can't say, except from hearsay.

3. In answer to cross-interrogatory No. 4, deponent says: I believe he did not intend to sell any of his cargo on the Ohio River, but that he would not sell anything until he got as far as Port Gibson, of he did there; I understand this from the declaration of Capt. Kent. I think I heard both Mr. Kent and Mr. Culbertson both talk about it.

5. In answer to cross-interrogatory No. 5, deponent says: The quantity of potatoes and stoneware I understood from Capt. Kent.

H. W. CARLOW.

Sworn to and subscribed before me on the day and at the place aforesaid.

JOHN HARRISON,
J. P.

Also, *Isaac Dillon* being produced and affirmed, answers as follows to the interrogatory propounded to him in this case:—

In answer to interrogatory No. 1, deponent says:

1. I reside at Zanesville, Ohio; occupation, Insurance Agent.

2. In answer to interrogatory No. 2, deponent says: I know nothing about the matters in the interrogatory excepting from the application made to me for insurance on said cargo; a copy of which application is annexed to answer to interrogatory No. 3.

3. In answer to interrogatory No. 3, deponent says: Application was made to me for insurance on said cargo, of which the following is a copy:—

"To Isaac Dillon, Agent, please Insure

50 bbls. of apples, value at	$1 50	$75 00
5 bbls. " onions, "	1 50	7 50
600 bush. corn in the ear	0 30	180 00
Stoneware		137 50
		$400 00
200 bushels potatoes		400 00

Nov. 29, 1852.

W. B. CULBERTSON."

I asked him at the time why he did not insure for a larger amount, and he answered that had raised them on his farm, and did not want to make a larger insurance, as he did not wish to increase his expenses in getting them to market. He had the privilege of coasting along, and of going to New Orleans if he chose.

4. In answer to interrogatory No. 4, deponent says: I have no personal knowledge of the matter.

5. In answer to interrogatory No. 5, deponent says: I have no personal knowledge of the matter.

6. In answer to interrogatory No. 6, deponent says: I have no personal knowledge of the matter.

7. In answer to interrogatory No. 7, deponent says: I have no personal knowledge of the matter.

8. In answer to interrogatory No. 8, deponent says: I have no personal knowledge, except that mentioned in answer to interrogatory No. 3.

9. In answer to interrogatory No. 9, deponent says: I suppose he was sole freighter and owner.

10. In answer to interrogatory No. 10, deponent says: I have no personal knowledge; all I know about the matter is contained in answer to interrogatory No. 3, above answered, and that at the time the insurance was effected he stated that there were more than 2,000 bushels of potatoes, and that as the insurance was high, he could only insure enough to cover expenses, and that as he had raised most of the articles, he could bear the balance of any loss above the insurance himself.

11. In answer to interrogatory No. 11, he answers as follows: They were all said to be on board at the time I insured them, on 28 Nov., 1852, except the corn, which was to be taken in at Blue Rock Township, 10 miles below where the potatoes were said to have been put in.

1. In answer to Cross-interrogatory No. 1, deponent says: I had not nor have I any whatever individually.

2. In answer to Cross-interrogatory No. 2, deponent says: I don't know anything personally about the matter.

3. In answer to Cross-interrogatory No. 3, deponent says: None.

4. In answer to Cross-interrogatory No. 4, deponent says: I understood from him that his intention was not to sell until he got to Port Gibson in Mississippi; under the Policy he had liberty to go to New Orleans.

5. I have no other answer to make, except as above answered.

ISAAC DILLON.

Sworn to and subscribed before me at the place on the day aforesaid.

JOHN HARRISON,
J. P.

Also *Eleazar Evans* being produced and sworn, answers as follows to the interrogatories propounded to him in this cause:—

1. In answer to Interrogatory No. 1, deponent says: I live in Muskingum County, Ohio, and am a farmer.

2. In answer to Interrogatory No. 2, deponent says: I helped load that boat at the time.

3. In answer to Interrogatory No. 3, deponent says: I helped load the potatoes and apples, and some turnips.

4. In answer to Interrogatory No. 4, deponent says: I know there was stoneware on the boat, but how much I don't know; I helped put on board said boat about 2,000 bushels of potatoes mentioned in said statement, likewise 20 barrels of the apples mentioned in said statement; there were put on before the corn was.

5. In answer to Interrogatory No. 5, deponent says: I know nothing further of the cargo of said boat except as above mentioned, and that there was a skiff attached to said boat.

6. In answer to Interrogatory No. 6, deponent says: I know that he bought from Spangler some of the potatoes; I saw stoneware in the boat.

7. In answer to Interrogatory No. 7, deponent says: I knew the potatoes, turnips, and apples, above spoken of, were the produce of his farm.

8. In answer to Interrogatory No. 8, deponent says: I know there were about 2,000 bushels of potatoes put on said boat, and 20 or 30 bbls. of apples that I helped put on; I saw stoneware on the boat at the time.

9. In answer to Interrogatory No. 9, deponent says: Culbertson was the sole owner.

10. In answer to Interrogatory No. 10, deponent says: There were about 2,000 bushels of potatoes, 20 or 30 bbls. of apples, some turnips; the stoneware I saw in the boat at the time, but I don't know the quantity.

11. In answer to Interrogatory No. 11, deponent says: The potatoes and apples above mentioned were put on at his place, 5 miles below Zanesville; the stoneware was on; and I am informed, and believe, the corn was put on 15 miles below Zanesville, at Blue Rock t'p, Muskingum county, Ohio.

In answer to Cross-Interrogatory No. 1, deponent says: 1. I have not now nor never had any interest in the cargo or in the event of this suit.

In answer to Cross-Interrogatory No. 2, deponent says: 2. I know that about 2,000 bushels of potatoes, and 20 or 30 bbls. of apples were put on board, as I helped put them on; the stoneware I saw in the boat at the time.

3. In answer to Cross-Interrogatory No. 3, deponent says: None from me.

4. In answer to Cross-Interrogatory No. 4, deponent says: I have no knowledge of hearing him say anything about it, only that I understood he was going to Port Gibson.

5. In answer to Cross-Interrogatory No. 5, deponent says: Nothing except as stated in the answer to the above interrogatories.

ELEAZAR EVANS.

Sworn to and subscribed before me at the place and on the day aforesaid.

JOHN HARRISON, *J. P.*

Also *O. P. Spangler*, being produced and sworn, answers as follows to the interrogatories propounded to him in this cause:—

1. In answer to Interrogatory No. 1, deponent says: I live at Wayne Township, Muskingum County, Ohio, and am a farmer.

2. In answer to Interrogatory No. 2, deponent says: I know that he owned such a boat; I helped load it; that Kent was master, and that it left the vicinity of Zanesville for a voyage down the Mississippi.

3. In answer to Interrogatory No. 3, deponent says: I put on myself 1,080 bushels of potatoes; saw some apples on them, some stoneware, and some more potatoes.

4. In answer to Interrogatory No. 4, deponent says: I know there were some apples, about 2,000 bushels of potatoes, a quantity of stoneware, but I don't know how much; I saw the skiff.

5. In answer to Interrogatory No. 5, deponent says: I can say nothing but as above stated in regard to the matter.

6. In answer to Interrogatory No. 6, deponent says: I know that he purchased from me 500 bushels of, and which were placed on said boat.

7. In answer to Interrogatory No. 7, deponent says: All the potatoes and apples were grown on his farm.

8. In answer to Interrogatory No. 8, deponent says: I saw stoneware in the boat, but don't know how much there was; about 2,000 bushels of potatoes and several barrels of apples were in said boat.

9. In answer to Interrogatory No. 9, deponent says: He was sole owner and freighter.

10. In answer to Interrogatory No. 10, deponent says: I know of nothing further than as above stated; about 2,000 bushels of potatoes, a quantity of apples, a quantity of stoneware.

11. In answer to Interrogatory No. 11, deponent says: The stoneware was on board at the time we put on the potatoes; the apples were there likewise, or the most of them; the potatoes were put on at Culbertson farm, about 5 miles below Zanesville; I understood that afterwards corn was put on below, about 15 miles from Zanesville.

In answer to Cross-Interrogatory No. 1, deponent says: 1. I have none.

In answer to Cross-Interrogatory No. 2, deponent says: 2. I personally know there were about 2,000 bushels of potatoes, a quantity of apples, a lot of stoneware.

3. In answer to Cross-Interrogatory No. 3, deponent says: He bought from me 500 bushels of potatoes at 25 cents per bushel.

4. In answer to Cross-Interrogatory No. 4, deponent says: He told me he intended to run it to Port Gibson, in Mississippi.

5. In answer to Cross-Interrogatory No. 5, deponent says: Nothing except as above stated.

O. S. SPANGLER.

Sworn to and subscribed before me, at the place and on the day aforesaid.

JOHN HARRISON,
J. P.

Also *Jeremiah Elder*, of the firm of Elder & McCoy, being produced and sworn on the part of the plaintiff, answers as follows to the interrogatories propounded to him in this cause:—

1. In answer to Interrogatory No. 1, deponent says: I reside in Putnam, Muskingum C., Ohio, and at present Postmaster, formerly a merchant.

2. In answer to Interrogatory No. 2, deponent says: I know such a boat, and the Captain, and the owner Mr. Culbertson; saw the boat at the landing at Putnam, and saw the stoneware which was in said boat loaded, and understood she was going down the river.

3. In answer to Interrogatory No. 3, deponent says: I sold to Mr. Culbertson part of the cargo of said boat, consisting of

2449 gallons of stoneware,
68½ dozen of ½ gallon jugs,
2½ " " quart "
12 bushels of onions,
4 flour barrels containing the onions.

I saw the above placed on board said boat; I sold Mr. Culbertson said ware on 16 Nov., 1852.

4. In answer to Interrogatory No. 4, deponent says: I have looked at said statement, and find that it contains the amount of stoneware; I sold them only 66, instead of 68½ doz. ½ gal. jugs: It contains the onions and the quart jugs.

5. In answer to Interrogatory No. 5, deponent says: I can't tell anything about said statement, except as to the stoneware, jugs, and onions.

6. In answer to Interrogatory No. 6, deponent says: Mr. Culbertson bought of me the articles mentioned in my answer to Interrogatory No. 3, to wit:

2449 gallons stoneware,
68½ doz. ½ gal. jugs,
2½ doz. quarts,
12 bush. of onions,
4 flour barrels containing the onions.

7. In answer to Interrogatory No. 7, deponent says: I know nothing about that.

8. In answer to Interrogatory No. 8, deponent says: I can't say

anything about the other articles except as to the matters mentioned in answer to Interrogatories No. 3 and 6.

9. In answer to Interrogatory No. 9, deponent says: All I know about it is, that I sold the articles above mentioned to Mr. Culbertson, who paid me for them.

10. In answer to Interrogatory No. 10, deponent says: I know nothing of the corn, potatoes, nor apples, but I know that

2449 gals. stoneware,
68½ doz. ½ gal. jugs,
2½ doz. quart jugs,
12 bush. onions, and the barrels,

which contain them, were put on board said boat at Putnam, Ohio, for said voyage.

11. In answer to Interrogatory No. 11, deponent says: I know nothing of the landing of anything else on said boat but as above mentioned in answer to Interrogatory No. 10.

1. In answer to Cross-interrogatory No. 1, deponent says: I have no interest now, nor had I at any other time.

2. In answer to Cross-interrogatory No. 2, deponent says: I know that the stoneware, jugs, and onions, were placed on said boat.

3. In answer to Cross-interrogatory No. 3, deponent says: Mr. Culbertson bought of me

2449 gals. stoneware, at 4½ c. per gallon,
68½ doz. ½ gallon jugs, at 37½ per dozen,
2½ doz. ¼ " " at 31½ " "
12 bush. onions, at 50 c. per bushel,
4 bbls. at 25 c. each.

4. In answer to Cross-interrogatory No. 4, deponent says: I heard Mr. Culbertson say he was going to Mississippi before he sold.

5. In answer to Cross-interrogatory No. 5, deponent says: I derived nothing stated in my answers to the direct and cross-interrogatories from others, except as stated in answer to cross-interrogatory No. 4.

JEREMIAH ELDER.

Sworn to and subscribed before me on the day and at the place aforesaid.

JOHN HARRISON,
J. P.

I, John Harrison, a Justice of the Peace, do hereby certify that H. W. Carlow, Eleazer Evans, O. P. Spangler, Isaac Dillon and Jeremiah Elder, of the firm of Elder & McCoy, the deponents were by me severally sworn and affirmed to declare the truth to the questions put to them in the cause; that the interrogatories and cross-interrogatories were produced to them, and thereto taken in writing

by my clerk in my presence, and subscribed by them respectively in my presence, on the day and at the place in that behalf first aforesaid.

JOHN HARRISON, [ ]
Justice of the Peace, Muskingum County, Ohio.

Commission fees paid plaintiff $6 25.

U. S. DISTRICT COURT.

(*No.* 6835.)

4. Policy of insurance for $400 on cargo, offered in evidence for lib't January 30th, 1854.

Protection Insurance Company of Hartford, Conn.

(*Sum insured* $400. *Valued at* $400.)

No. 1.

This policy of insurance witnesseth, that the Protection Insurance Flat-boat Company do, by these presents, cause to be insured, lost or not lost, William Culbertson, of Muskingum County, Ohio, four hundred dollars on the cargo of the flat-boat Rainbow, Capt. D. H. Kent, consisting of apples, onions, potatoes, corn, and stoneware, as set forth in application; it being understood that said boat is well found in skiff and lines, and crew of pulling hands usual in such voyages; whereof is Master, for the present voyage, D. H. Kent, begining the adventure upon said property at Zanesville, and to continue during the voyage, and until 5 days after arrival in the port of destination, New Orleans, La. And it shall be lawful for the said flat-boat during said voyage, to proceed to, touch and stay at, any intermediate places, if thereunto obliged by stress of weather or other unavoidable accidents, without prejudice to this insurance, with the privilege of coasting or transacting any lawful business connected with the voyage. Such privilege not exceeding a detention of thirty days in all. Proof of such detention to be furnished by the assured, if required: and in case of any loss or misfortune resulting from any peril insured against, it shall be the duty of the party insured, his agents or assigns, to use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured, to the charges whereof the said Insurance Company engages to contribute in proportion as the sum herein insured bears to the whole sum at risk; and it is mutually agreed, that the acts of either party, or of their agents, in securing, preserving, relieving, and recovering the property insured, shall not be considered or held to be either a waiver, or an acceptance of an abandonment.

Touching the perils which the Insurance Company are content to bear and take upon themselves in the premises, they are of the Rivers, Fire, Jettisons, Enemies, and Overpowering Thieves, (but no

other Thieves:) *Provided*, That the insurers shall not be liable, except in cases of general average, for any loss or damage, unless it amounts to ten per cent. on the whole value at risk, exclusive of all charges and expenses incurred for the purpose of ascertaining and proving the loss.

And it is also agreed, That the insurers shall not be liable for damage or injury to property by wet or dampness, or being spotted, discolored, rusty or mouldy, unless the same be caused by some disaster to the boat, and proof thereof furnished.

And it is further agreed, That in case of general average, if the property insured be valued in the statement of average beyond the amount insured, the assured shall recover on this policy only the proportion of the sum assessed, which the sum insured bears to such valuation.

And it is hereby agreed, That this Insurance Company is not liable for loss or damage arising from or caused by the said flat-boat being unduly laden; nor for loss or damage during the time the said flat-boat may be lashed or fastened to any other boat, either floating or landing therewith, (except in the Ohio and Mississippi rivers,) nor in any case when towed by a steamboat, or when more than two boats are lashed or fastened together.

And it is further agreed, That all boats not excepting seventy feet in length, shall be manned by not less than three competent hands and a pilot; and all boats exceeding seventy and not more than ninety feet in length, by not less than four competent hands and pilot; and all boats exceeding ninety and not more than ninety-five feet in length, must have two setts of sweeps, and be manned by not less than five competent hands and pilot; and all boats exceeding ninety-five feet in length, must have two setts of sweeps, and be manned by not less than six competent hands and pilot.

And in case of disaster, the assured, his agents or assigns, shall not sell the property insured, (except at the port of destination,) without express authority from the insurers; but shall forward it if recovered to the port of destination, without unnecessary delay: *Provided*, that articles of cargo which may be in a damaged and perishing condition, so as not to admit of delay, may be sold at public sale, at the nearest convenient market, for account and benefit of whom it may concern.

And it is hereby agreed, That if the insured shall have made any other insurance prior in date to his policy upon the property aforesaid, which shall equal or exceed in amount the whole value at risk, then the said Insurance Company shall not be liable for any loss under this policy, and the insured shall be entitled to return of premium. But if the amount of such prior insurance shall not equal the whole value at risk, then the said Insurance Company shall be answerable for any amount not exceeding the sum herein insured, which the prior insurance shall be deficient in covering; and shall be liable for such proportion of loss as this deficiency bears to the whole sum at

risk. And in all other cases, the said Insurance Company shall be chargeable with its proportion of loss, according as the sum herein insured bears to the whole sum at risk.

Insurances made on the same day, or on other days, if notice thereof be endorsed hereon, are to be deemed simultaneous, and an adjustment of loss shall be made accordingly. And in case of loss, such loss shall be paid within sixty days after proof and adjustment thereof, the amount of premium note, if unpaid, and all other notes, accounts, and demands of said Company against the said insured being first deducted. All claims under this policy are barred, unless prosecuted within one year from date of loss.

It is further agreed, That if any dispute shall arise relating to a loss on this policy, it may be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. It is also agreed that this policy shall be void in case of its being assigned, transferred, or pledged, without the consent, in writing, of the insurers. (Premium $20.)

And the Insurance Company aforesaid do hereby bind the capital stock and other common property of the said Insurance Company, to the assured, heirs, executors, administrators, and assigns, for the true performance of the premises, having received the consideration for this insurance at the rate of 5 per cent. on the sum herein insured.

In witness whereof, the Protection Insurance Company have caused these presents to be signed by their President, and attested by their Secretary, at their office in the city of Hartford, State of Connecticut. But this policy shall not be valid until countersigned by W. B. Robbins, Esq., General Agent of the Company at Cincinnati, and by Isaac Dillon, Esq., Agent at Zanesville, Ohio.

D. W. CLARK,
President.

(Attest) WM. CONNER,
Secretary.

Countersigned by

W. B. ROBBINS,
General Agent for the Western States at Cincinnati.

Countersigned at Zanesville this 29 day of Nov., 1852.

ISAAC DILLON,
Agent.

(Close of Libellant's evidence.)

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE. } No. 6835.

1st. Depositions of Edward Lefevre and Mich'l Dolan, offered by respondents Jan'y 30th, 1854.

U. S. DISTRICT COURT:

In Admiralty.

WM. B. CULBERTSON
vs.
ST'MBOAT SOUTHERN BELLE.

Testimony taken by consent.

Edward Le Fevre, witness for defendant, saith, he was on board the Southern Belle at the time of the collision; he was assistant pilot, and was at the wheel at the time; it was on Monday morning, shortly before daylight, that the Southern Belle approached Grand Gulf; the wind was blowing very hard on shore at Grand Gulf; the Southern Belle stood off about three breadths of the boat, on account of the wind, till she came up abreast of the wharf-boat; it was then seen that another boat was already lying at the wharf-boat; it was the steamboat Atlantic; she had live-stock on her guards; the pilot then remarked to the Captain, who was standing on the hurricane roof, forward, that if they landed outside of the Atlantic they might do some damage, on account of the high wind, and that they had better land below the wharf-boat; the Captain said very well, back her down; the pilot immediately rung the backing bell, and backed down; after making two or three revolutions, we discovered a flat-boat lying a little below the wharf-boat, and alongside the bank, close in shore; the pilot sung out that there was a flat-boat in there, immediately rung the bell to stop her, and reverse the engine to go ahead, but before they could get headway on her, on account of the high wind, they run against the flat-boat; it was yet dark when they attempted to make the landing at Grand Gulf; there were torches on the forecastle of the Southern Belle; in going up in the first instance, saw nothing of the flat-boat which lay at the bank; witness noticed the flat-boat before the Southern Belle struck her, and saw no light on her; it was not till the torchlight from the Southern Belle reflected on the flat-boat that he discovered her; did not hear any call or notice from any one on the flat-boat before the collision; if there had been any call from the flat-boat, thinks he would have heard it; witness has been running on the river as a mate since 1838; has landed at Grand Gulf twice almost every week during all this time; he has been regularly in the packet trade; the flat-boat landing at Grand Gulf is above the wharf-boat

about 150 or 200 yards, in front of Pearson & Hume's store; has never known flat-boats to make use of that portion of the landing immediately below the wharf-boat where the Southern Belle attempted to come in; steamboats usually come in there to take on cotton; it is known as the cotton landing; says cotton is not usually taken in across the wharf-boat, but at the landing below; has stopped once or twice at the same landing to put out freight, as we were going up; at the time of the collision, Captain White was on the hurricane deck; Charles Callahan, the pilot, was at the wheel; witness was at the wheel assisting him, but the pilot had charge of the wheel; the big bell of the steamboat Southern Belle was rung six or eight minutes before the Southern Belle landed, in order to give notice; the Southern Belle was a regular packet, running between New Orleans, Vicksburg, and Milliken's Bend; Grand Gulf was one of her regular stopping places, and she ordinarily makes the landing there on Monday, about three or four o'clock in the morning.

Cross-Examination.

Witness says the place he calls the cotton landing extends about three hundred yards below the wharf-boat, cotton being often scattered along, and the boat landing wherever it is most convenient to take it; has seen the cotton extended on the bank at least three lengths of the Southern Belle; does not know the names of the streets in Grand Gulf; knows where Reynold's wharf used to be; it is an old broken down wharf, now gone; the wharf lies pretty near abreast where Reynold's wharf used to be; has seen flat-boats tied to the bank before this, some six or seven hundred yards below Reynold's old wharf, but they have not been in the habit of coming nearer; knows nothing about the ordinance of the town of Grand Gulf relative to the division of the landings; the wharf-boat had been removed about her length lower down a few days before this accident occurred; she had been lying with her bow up stream, and was turned round, so that her bow lay afterwards down stream; the wharf-boat is about 250 or 260 feet in length; it was the hull of the old steamboat Bulletin; does not recollect whether the moon was shining, but does recollect that it was starlight; it was a clear morning; believe that the pilot first discovered the flat-boat, or that they all discovered it about the same time; the pilot said there is a flat-boat there, and the Captain answered, yes, I see; the flat-boat sunk to her roof in about five or six minutes.

Re-Examined.

The wind was blowing very strong that morning on shore; when the flat-boat was discovered, he thinks it was too late to avoid the collision by any possible exertion on the part of the Southern Belle; everything that could be done to avoid the collision, after the flat-

boat was discovered, was done; the steamboat Southern Belle is about 260 or 270 feet in length; never say any harbor master in the port of Grand Gulf, and never knew there was one; witness has never seen a copy of the ordinances regulating the division of the landings at Grand Gulf till to-day; never knew that there was any.

ED. LEFEVER.

Sworn to and subscribed before me this 29th day of January, 1853.

C. V. JONTE,
Justice of the Peace.

U. S. DISTRICT COURT:

In Admiralty.

WM. B. CULBERTSON
vs.
ST'M B'T SOUTHERN BELLE.

Testimony taken by Consent.

Michael Dolan, witness for defendant, saith that he was a deck hand on board the steamer Southern Belle; witness was standing on the forecastle of the Southern Belle at the time of the collision—it was before daybreak—the Southern Belle had torches on her forward deck—the wind was blowing very strong on shore. When the Southern Belle came to Grand Gulf she found another boat lying at the wharf-boat—the Southern Belle dropped down and came into the shore below the wharf-boat—that he saw nothing of the flat-boat which lay below the wharf-boat until the Southern Belle was backing down—saw the flat-boat before she was struck, and noticed that she had no light on her—if she had had a light on board, thinks he would have seen the flat-boat in going up, and before they commenced backing down—heard no cry nor signal from the flat-boat before the collision—the Southern Belle was right close up to the flat-boat when he first saw it—thinks it was then impossible to prevent striking her—all hands were forward on the deck of the Southern Belle—had some freight to put out at Grand Gulf.

Cross-Examination.

Saw no men on the deck of the boat as the steamboat approached her, but saw one man come up from below about the time she struck—can't tell what part of the steamboat struck the flat-boat first.

his
MICHAEL + DOLAN.
mark.

Sworn to and subscribed before me this 29th day of Jan'y, 1853.

CR. JONTE,
Justice of the Peace.

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE. } No. 6835.

2d. Deposition of Chas B. Callaham, off'd by Repondents Jan'y 30th, 1854.

WILLIAM B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE.

In Admiralty.

Deposition of Chas. B. Callaham, taken on part of Claimants:

Deponent, being duly sworn, states that at the time of the collision complained of he was a pilot on board the Southern Belle, and on watch at the wheel at the time it occurred, before daylight. On approaching the Grand Gulf landing the wind was blowing very hard, a perfect gale, from the opposite shore, and therefore the Southern Belle proceeded very cautiously, and stood off more than the usual distance, on account of the wind, before making the landing. On getting opposite the wharf-boat, at which the landing was usually made, found the steamer Atlantic already lying at the wharf-boat. Saw also that the guards of the Atlantic, as it appeared, were full of live stock, and remarked at the time to the captain of the Southern Belle, who was on the roof of the hurricane deck, that if they landed against the Atlantic they would be in danger of killing the stock or doing some damage. Suggested to the captain, therefore, that it would be better to back down and come in below the wharf-boat, where they were in the habit of taking cotton in. Accordingly by the boat was backed, and was coming in at what was called the cotton landing, and it was not till the boat was close in shore that a flat-boat was discovered lying under the bank. Immediately went ahead, in order to avoid coming in collision with the flat-boat, but, before they could get headway on the boat, were driven by the strong wind against the flat-boat.

There was no light on the flat-boat, and heard no cry above or signal of any kind from the flat-boat. Thinks that the flat-boat was lying less than the length of a steamboat below the wharf-boat. Has been a pilot on the river for about twelve years. Has been employed on the river since 1826, though only acting as a pilot for the last twelve years or thereabouts. Is well acquainted with the landing at Grand Gulf. The Southern Belle is a regular packet running between New Orleans and Vicksburg and Milliken's Bend. Stops regularly at Grand Gulf ascending and descending. The place at which the Southern Belle attempted to come in, and where the flat-boat was lying, is a usual landing-place for steamboats. Thinks that

the Southern Belle has come in under the wharf-boat as often as at the wharf-boat on her downward trips. Has also landed there to put out freight on the upward trips, when he did not wish to land against the wharf-boats, though not so often. In this instance thought it dangerous to attempt to make a landing against the Atlantic, both on account of the high wind and because the Atlantic, being more heavily loaded, and therefore deeper than the Southern Belle, her guards were lower than those of the Southern Belle, which might in consequence cap over them and do some injury. Has seen flat-boats lying below the wharf-boat, but that is not their usual or proper landing-place. The flat-boat landing has always been at the point above the wharf-boat ever since witness has known anything about the landing at Grand Gulf. There is no harbor-master at Grand Gulf to witness' knowledge—never saw a harbor-master nor heard of one at Grand Gulf. Witness's watch commenced at 4 o'clock A. M., and when he came on watch the Southern Belle was about six or eight miles below Grand Gulf. When the flat-boat was discovered, thinks it was impossible to avoid coming into collision with it. Cannot now think of anything that could have been done more than was done to avoid the collision the moment that the flat-boat was seen, but without success, on account of the wind blowing at the time. The flat-boat was so close in that it was under the shade of the bank, and could not be seen till they were almost on it. If there had been a light on the flat-boat, thinks they would have seen it as they passed up, and, of course, would not have attempted to come in at the cotton landing; but, as it was, knew nothing of the flat-boat till it was too late to avoid it.

Cross-Examined.

Saw no men on top of the flat-boat until after the collision: if any were there before the collision, I did not see them. We went up, so as to be nearly abreast of the Atlantic, and at a distance of about 30 to 40 yards, but am not positive about the distance; then begun to drop down, and after dropping some distance, begun to go ahead again before discovering the flat-boat. It was not quite day at the time; daylight had not begun to appear; I think it had not. It was moonlight. The moon was not bright. The flat was lying in the shade of the bank, and in the light that we had at the time, I think she could not have been seen by any one looking carefully to see if there was any flat there, further than fifty or seventy-five yards off.

I have seen flat-boats very often lying along the shore at Grand Gulf, below the wharf-boat, but always a good ways below. I have seen them two or three lengths of a steamboat below the wharf-boat. I have seen them nearer than that to the wharf-boat. I have seen them all along the shore in front of Grand Gulf; cannot tell exactly the spots where they lay. The usual place for them to land at Grand Gulf is above the wharf-boat, which I presume they do to

keep out of the way of the steamboats. Steamboats never land above the wharf-boat unless they have cotton to take in at some of the upper sheds, and they don't want to haul it down. The upper sheds are about a hundred yards perhaps, further above the wharf-boat.

The place called the Cotton Landing, below the wharf-boat, extends about or over the length of a long steamboat below the wharf-boat; do not know or recollect any wharf called Rundel's at Grand Gulf; recollect an old wharf called Whiteman's, now gone into the river, which was about where the wharf-boat lies. I recollect also that the steamboats formerly took in cotton at Muire's Press, about a half a mile below the wharf-boat, but that was not a long time ago; do not recollect seeing any boats land between Muire's Press and the place I have designated as the Cotton Landing (about 100 to 150 yards below the whaf-boat), to take in cotton. I do not recollect whether the wharf-boat was moved before or after the collision with this flat-boat, but I recollect that she had been swung round about that time.

When I first discovered the flat-boat, we were not more than two or three widths of the boat distant from her; that is as near as I could come to it; did not back out engines after I discovered her; were going ahead at the time, or trying to go ahead, when we discovered her, but stopped the engine as soon as we saw her. When we struck, the flat was full length alongside of us.

Re-Examined.

The boat had no headway on her at the time the flat-boat was discovered. After backing down, the engines had been started, so as to check the progress or movement of the boat downwards, and she was without headway and drifting in, when the flat was first seen. It was impossible to do anything to avoid the collision.

CHARLES B. CALLAHAN.

Sworn to and subscribed before me, this 24th day of March, 1853.

C. V. JONTE,
Justice of the Peace.

U. S. DISTRICT COURT.

No. 6835.

WM. B. CULBERTSON vs. ST'R SOUTHERN BELLE.

3d. Testimony of J. M. Pettit, off'd for Claim't Jan'y 30th, 1854.

WM. B. CULBERTSON
vs.
THE SOUTHERN BELLE.

J. M. Pettit, witness for respondents, being sworn, saith: that he is the pilot on the steamer Atlantic; was on duty on the morning

when the collision occurred between the Southern Belle and the flat-boat at Grand Gulf; was in the pilot-house at the time. The Atlantic had been at the wharf-boat about five minutes when the Southern Belle came up. She came up and stopped her engines under the stern of the Atlantic, and finding that the Atlantic was lying at the wharf-boat, witness heard the bell rung to back her, in order, as witness supposed, to land below the wharf-boat. Witness remarked, at the time, that if he did not keep on backing with both wheels, he would sink the flat-boat; but they continued to back, and the last witness saw of the Southern Belle, she was alongside of the flat-boat. Witness has heard the testimony of Mr. Samuel Cowarden, and concurs with him in all that he has stated, unless it be the conversation between him and the man on the wharf-boat, which witness was not present at. There was not light on the flat-boat when the Atlantic came in, nor did witness see any person about the boat. First saw the flat-boat when a good piece out in the river —about fifty yards—not more than that, perhaps not quite so much. Discovered the flat-boat by the light of the torches on board the Atlantic. Does not think there was light enough for him to have discovered it at the distance he was, without the torches. From the place in which the Atlantic was, thinks he could have avoided the collision with the flat-boat, even though there had been another boat at the wharf-boat. The fact, however, of another boat being at the wharf-boat certainly made it more difficult for a boat which had started to come in below the wharf-boat, to go ahead and avoid the flat-boat. The wind was blowing very hard at the time on shore. It was not yet daylight when the collision occurred; thinks that it occurred about 40 minutes past 4 A. M.—and at that season it is not daylight till about six A. M. Thinks the Southern Belle had torches brought out about the time; she first stopped her engines. She was then, in witness's opinion, about twenty yards from the flat-boat, outside. The Southern Belle came up, in the first instance, outside of the Atlantic, off her larboard quarter, but the stern of the Southern Belle was lopped in towards the land, under the stern of the Atlantic, which was lying broadside against the wharf-boat. The torches may very possibly have been out on the Southern Belle before witness saw them. Witness has been acquainted with the landing at Grand Gulf about seventeen years. Being asked if, in his opinion, it was proper or prudent for the flat-boat to lie where she was without a light out, answers that he thinks not; that she was not lying in her proper place: under any circumstances, does not think it was proper for a flat-boat to lie there without a light, when steamboats were coming in to make their landing.

Cross-Examined.

It is usual in landing at night to have a torch held out, so as to see if there is anything in the way of the landing. I would not

consider it prudent to have landed on such a night on a lee shore without having torches to see the landing. Don't recollect having seen flatboats at Grand Gulf about the place where this flat was lying.

J. M. PETTIT.

Sworn to and subscribed this 14th May, 1853, before

ROB'T M. LUSHER,
U. S. Comm'r.

Re-Examined.

After witness had made the landing at Grand Gulf, he was looking out from the Pilot-house towards the wharf-boat to see what they were doing, and paid no attention to the movements of the Southern Belle till he heard the bell rung on board for her to back; witness then looked round, and saw the Southern Belle in the position he has already stated.

J. M. PETTIT.

Sworn the date above, before

ROB'T M. LUSHER,
U. S. Cr.

U. S. DISTRICT COURT:

No. 6,835.

WM. B. CULBERTSON VS. ST'R SOUTHERN BELLE.

4th. Testimony of Sam'l Cowarden, off'd for Claimant Jan'y 30th, 1854.

W. B. CULBERTSON
vs.
THE SOUTHERN BELLE.

Samuel Cowarden, witness for the respondents, being sworn, saith that he is employed on the steamer Atlantic as mate. In the beginning of January last, being the morning when the collision occurred between the Southern Belle and a flat-boat lying at Grand Gulf, the "Atlantic" had just landed, and was lying at the wharf-boat at Grand ——; witness was standing on the hurricane-roof when the Atlantic made the landing. The Atlantic was coming down the river, and having some freight to put out at Grand Gulf, rounded to, in order to make the landing; after rounding to, found the wind blowing so strong on shore that he was afraid to attempt landing against the wharf-boat for fear of damaging the boat's (the Atlantic's) sides; witness observed then to Mr. Pettit, the Pilot of the Atlantic, that they had better land below the wharf-boat; just at that time, witness called to the watchman to bring out the torch, used when making a landing, and then after the torch was brought,

discovered a flat-boat lying right below the wharf-boat; witness cannot state how far below, but it was just where the Atlantic was coming in, if the flat-boat has not been there; discovered the flat-boat when within some twenty or twenty-five yards of the bank. Immediately on discovering the flat-boat went ahead on the boat, and landed at the wharf-boat. Witness remarked on making the landing, to the man who kept the wharf-boat, that he (witness) thought the flat-boat was lying in a very dangerous place—that some boat would come in there and sink it. The keeper replied that the flat-boat was right in the way of steamboats taking in cotton, and that some person, witness understood him to say, some one of the authorities, ordered him away, but that he had not moved.

The Atlantic had not been at the wharf-boat more than five minutes when the Southern Belle came up—witness had seen a boat coming up, the same which proved to be the Southern Belle—as the Atlantic rounded to in order to anticipate her at the landing; witness was putting our freight from the deck of the Atlantic when the collision occurred between the Southern Belle and the flat-boat, and did not see it. The collision occurred between four and five o'clock in the morning, and before daylight: witness used a torch in putting out freight; witness is positive that it was not then daylight; it did not come daylight till after the Atlantic left the landing, and had got nine or ten miles down the river. There was no light on the flat-boat when the Atlantic came in, nor any person on watch about the flatboat, that witness saw; witness did not discover the flat-boat till the torches were brought out on board the Atlantic, and believes that he would not have discovered the flat-boat if the torches had not been brought; witness has been familiar with the landing at Grand Gulf for ten years past; witness being on an up-country boat, had been in the habit of landing at the wharf-boat, unless when they took in cotton, which was not often the case; when taking in cotton he landed both above and below the place where the wharf-boat was lying; it was one of the places which witness would call the "cotton landing," and which almost everybody else does call, where the flat-boat was then lying. The only place where witness ever saw a flat-boat lying at Grand Gulf, was above the wharf-boat; never saw a flat-boat lying before in the place where the libellant's was lying; considered at the time that the flat-boat was very much out of its place; thinks that it would have been prudent for the flat-boat to have brought out a light when the boat's bell was rung; has always seen flat-boats hang out a light, or give some signal by hollowing, or some such cry, whenever lying at a point where steamboats come in; witness thought in the first instance that it was an empty flat-boat, from the fact that no light was shown. The night was a dark, ugly, blustering one, very stormy; there was no rain, but the wind was blowing very hard on the shore.

Cross-Examined.

It is usual before making a landing at night to have the torches brought out for the purpose of seeing if there is anything in the way; witness never makes a landing at night (unless it be a moonlight night), without having the torches brought out.

SAMUEL COWARDEN.

Sworn to and subscribed this 14th May, 1853, before

ROB'T M. LUSHER,
U. S. Cr.

U. S. DISTRICT COURT.

WM. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE. } No. 6835.

5th. Commission, interrogatories, and depositions of S. C. Keyes and others, returned by J. A. Maxwell (Cr.), Judge of Probate Court, Claiborne County, Miss. All (except the deposition of Q. A. French) read in evidence for claimants and respondents Jan'y 30th, 31st, 1854.

DISTRICT COURT OF THE UNITED STATES,

holding Sessions at New Orleans in and for the Eastern District of Louisiana.

To any Judge, or Justice of the Peace, or U. S. Commissioner, at Grand Gulf, Miss.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you S. C. Keyes, J. H. Aby, S. Shelden, Geo. W. Smith, L. W. Matthews, Q. A. French, and John D. Smith, and then duly examine on oath touching and concerning certain matters and things in a case now depending in the said Court, wherein Wm. B. Culbertson is libellant, and the owners of the steamboat "Southern Belle" (libelled) are claimants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to his Court without delay, to be read in evidence on the trial of said cause; and send also this writ, together with the interrogatories hereto annexed by the parties.

Witness the Honorable Theo. H. McCaleb, Judge of the District Court of the United States at the City of New [SEAL.] Orleans, the eighteenth day of February, Anno Domini 1853, and the seventy-seventh year of the Independence of the United States of America.

N. R. JENNINGS,
Clerk.

By ROB'T M. LUSHER,
D'y Clerk.

U. S. Dist. Ct.

Wm. B. Culbertson
vs.
St'r Southern Belle.

Interrogatories to be propounded to S. C. Keyes, of Grand Gulf, a material witness for claimants and respondents:—

I. Where do you reside? What is your age and occupation?

II. Do you know anything in respect to any ordinance in respect to the Harbor or Landing Gulf at Grand Gulf? If so, please state when the said ordinance was passed and by whom. Has the said ordinance been strictly enforced, or has it fallen into disuse? Is it at present observed?

III. Have there been any changes in the harbor or landing-place at Grand Gulf since the date of the aforesaid ordinance? If so, please state what changes. Are the different portions of the port or landing-place still known by the same definitions or divisions?

IV. Is there any Harbor Master for the Port of Grand Gulf? If so, what is his name, and when was he elected or appointed?

V. Are you acquainted with the port of Grand Gulf? If so, please state whether the portion of the landing immediately below the wharf-boat is the usual and proper place for flat-boats to come in and to moor at. Do steamboats ever come in and land at that place? ascending or descending? Is it usual and proper for steamboats to come in and make their landing at that place?

If the wharf-boat were occupied by another boat, and on account of the darkness and high wind blowing in shore at Grand Gulf, it was considered dangerous for an ascending packet to attempt to land outside of the boat previously at the wharf-boat, would it be proper for the packet to back down and come into shore below the flat-boat?

VI. Do you know of anything further that can be of service to the claimants and respondents, (owners of the Southern Belle,) in the above entitled suit? If so, please state the same as fully and particularly as if specially interrogated in respect thereto.

HUNTON & BRADFORD,
Proctors.

Object to 5th Interrogatory as leading.

Cross-Interrogatories.

1st. Have you ever sought or inquired for the ordinance referred to in the direct interrogatories?

2d. If you say you know of no harbor-master at Grand Gulf, then say are you acquainted with Elijah Conklin of said place? What is his occupation? Has he an office, and what is it?

3d. Have you not seen flat-boats landing or moored in the vicinity of the wharf-boat below it? And how far off were they?

4th. State all else within your knowledge of benefit to libellant,

if there be any fact showing that the flat-boat belonging to him was struck through the carelessness of the Southern Belle, her officers or crew.

BENJAMIN & MICOU,
of Counsel.

The foregoing interrogatories and cross-interrogatories were by me exhibited to the witness, S. C. Keyes, and his answers to the same on oath are herewith returned.

Feb'y 22, 1853.

JAS. A. MAXWELL,
Judge and Comm'r.

U. S. DIST. C'T:

In Admiralty.

W. B. CULBERTSON
vs.
STEAMBOAT SOUTHERN BELLE.

Interrogatories to be propounded to Messrs. S. Shelden, G. W. Smith, L. W. Matthews, Q. A. French, J. D. Smith, J. H. Aby, and other witnesses for d'f'ts.

I. What is your age and occupation? Where do you reside? Are you acquainted with the port or landing-place at Grand Gulf?

II. At what time did the flat-boat called the "Rainbow," belonging to the libellant, W. B. Culbertson, arrive in the port of Grand Gulf? At what place did the said flat-boat come in or make fast? If you state that it was below the wharf-boat, state how far below. Is that the usual and proper place for flat-boats to come in or make fast at, in the port of Grand Gulf? Do steamboats ever come in or make their landing at that place, either ascending or descending?

III. Was anything said to the master of the said flat-boat "Rainbow," about the position of his boat? If so, please state fully and particularly what was said to him on that subject, and by whom, and at what time. Did the master of the said "flat-boat" make any change on the position of his boat in consequence of what was so said to him?

IV. Do you know of any accident having occurred to the said "flat-boat" on the day of the arrival, and by which the said flat-boat was stove or made to leak? If so, state the nature of the accident, at what time it occurred, and whether or not any portion of the cargo was thrown overboard.

V. Did you see the collision between the said flat-boat and the St'r "Southern Belle," on the morning of the 3d of January last? At what hour in the morning did said collision occur? Was the wind then blowing strong or light, and in what direction? Was there any boat then lying at the wharf-boat, and if so, what boat? Did the "Southern Belle," in the first instance, attempt to make a landing

at the wharf-boat? Why did she not make a landing at the wharf-boat? What course did the "Southern Belle" then take in order to effect a landing? Please state fully and particularly how the collision between the "Southern Belle" and the flat-boat took place.

VI. Was it, or not, daylight when the accident happened? Were the torches lighted on board the steamer "Southern Belle?"

Was there any light hung out on the flat-boat "Rainbow" before and at the time of the collision? Did you hear any cry or alarm from the flat-boat, before the collision?

VII. Do you know anything in respect to the cargo of the said "flat-boat? And if so, please state of what it consisted. Was all the cargo on board the said flat-boat at the time of the collision, lost in consequence thereof? If not, state what portion was saved. State as nearly as you can the value of said flat-boat and cargo, which was lost by the collision.

VIII. Is there any part of the port or landing-place at Grand Gulf usually appropriated to the use of flat-boats? If so, is such flat-boat landing below or above the wharf-boat? How far is the flat-boat landing from the wharf-boat? What is the length of the wharf-boat? Is there any portion of the port or landing-place which is known as the "cotton landing?" If so, state what portion, and how far it extends.

IX. Is there any law or ordinance which divides and regulates the port of Grand Gulf? If so, please state when the same was enacted, and annex a copy thereof, if you have one. Has it been regularly observed and enforced? or has it fallen into disuse or neglect? State fully all you know on this subject.

X. Do you know of any fact or circumstance, not inquired about, which can be of advantage to the d'f'ts (owners of the Southern Belle)? If so, please state the same fully and particularly, as if specially interrogated in respect thereto.

HUNTON & BRADFORD,
Proctors for Def'ts.

Object to any other witness being examined other than those named, and annex cross-interrogatories.

BENJAMIN & MICOU,
for Libellant.

The foregoing interrogatories were exhibited to and by me propounded to the several witnesses therein named; and their answers to the same, on oath, are hereinafter contained.

Given under my hand Feb'y 25, 1853.

JAS. A. MAXWELL,
Judge and Comm'r.

U. S. D. C.

WILLIAM B. CULBERTSON
vs.
SOUTHERN BELLE AND OWNERS.

Cross-interrogatories to be propounded to C. Shelden, G. W. Smith, L. W. Matthews, Q. A. French, J. D. Smith, and H. Arby, residing at Grand Gulf, Miss., and material witnesses for libellants.

1st. Did you witness the collision? How far off were you at the time?

2d. How light was it when it occurred? Was it not sufficiently light for the flat-boat to have been seen at a distance of one hundred yards? If not, for what distance could it have been seen?

3d. If you say that anything was said to master of the flat about the place where he was moored, then say by whom. Had he any authority over the port? Was he an officer of the port? If so, what officer? At what time did it occur?

4th. If you say that there is no ordinance regulating the places for landing at Grand Gulf, then say whether you have inquired of the President of the Selectmen or the Clerk of Council for such ordinance.

5th. If you say that an accident occurred to the flat the evening before the collision with the Southern Belle, then say did you not assist in saving the flat or repairing the damages? How many persons assisted? At what hour did you leave her? Was she not safe and secure when you left her? Had not the leak been stopped?

6th. Was any part of the cargo thrown over besides a part of the stoneware? If yea, what else was thrown over? State as particularly as you can.

7th. Was it not light enough when the Southern Belle struck the flat to distinguish the flat at a distance of one hundred yards or more? How far could she have been seen?

8th. Had not the day begun to break before the collision?

9th. If you speak of the cargo of the flat-boat, then say how you know of what it consisted? If any part of it was saved, how much? and what became of it?

10th. State all else that may be within your knowledge of benefit to the libellant.

BENJAMIN & MICOU,
for Libellant.

The foregoing cross-interrogatories were by me exhibited and propounded to the several witnesses named in the direct interrogatories preceding, and their answers to the same on oath are hereinafter contained.

Given under my hand Feb'y 25th, 1853.

JAS. A. MAXWELL,
Judge and Comm'r.

THE STATE OF MISSISSIPPI,
Claiborne County:

The testimony of S. C. Keyes, S. H. Aby, S. Shelden, Geo. W. Smith, L. Matthews, Q. A. French, and Jno. D. Smith, witnesses produced and sworn before James A. Maxwell, Judge of the Probate Court of said County, at his office in Grand Gulf County aforesaid, in pursuance of a commission issued from the District Court of the United States holding sessions in and for the Eastern District of Louisiana, in a certain cause therein pending, wherein Wm. B. Culbertson is libellant, and the owners of the steamboat Southern Belle (libelled) are claimants in admiralty.

And *S. C. Keyes*, a witness for the claimants, having appeared on this 22d day of February, A. D. 1853, and after having been by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth within his knowledge, in answer to the direct and cross-interrogatories propounded to him, on oath answers and says:—

In answer to direct Interrogatory 1st: I reside at Grand Gulf, Mississippi, am aged over forty years, and am by occupation a silversmith and jeweller.

In answer to Interrogatory 2d: I answer I have some knowledge of an ordinance in respect to the harbor and landing at Grand Gulf; said ordinance was passed previous to the year 1840, and was passed by the President and Selectmen of the Corporation of Grand Gulf. Said ordinance has not been strictly enforced, but has fallen into disuse altogether. It is not at all observed at present.

In answer to Interrog. 3. I answer I do not think there has been any change in the harbor or landing-place at Grand Gulf, since the date of the aforesaid ordinance. The different portions of the port or landing-place are still known by the same definitions divisions.

In answer to Interrogatoory 4th. I answer that there is a harbor master for the port of Grand Gulf, his name is Elijah Conklin, and has been appointed annually for several years, on the 1st Monday in March.

In answer to Interrog. 5. I answer I am acquainted with the port of Grand Gulf, and have been for 15 years last past. The portion of the landing immediately below the wharf-boat, is not the usual or proper place for flat-boats to come in and moor at. Steamboats very often, and almost constantly come in at that place, both ascending and descending. It is usual and proper for steamboats to come in and to make the landing at that place. If the wharf-boat were occupied by another's boat (of which I have no knowledge), and on account of darkness and high wind blowing in shore at Grand Gulf (of which I have knowledge that the wind was so blowing), it should be considered dangerous for an ascending packet to attempt to land outside of the boat previously at the wharf-boat in such case, and under such circumstances it would be proper for the packet to back

down, and to come to the shore below the flat-boat, or immediately below the wharf-boat.

I answer to Interrogatory 6th. I answer that nothing further of interest to the claimants now occurs to me, except that I have been a member of the Board of Selectmen of the Corporation of Grand Gulf for the last 15 years, with the exception of three years, and for several years, President of the Board. The office of harbor master is a mere sinecure, without perquisites or pay, and the appointment has been made merely to comply with a provision of the charter.

In answer to Cross-Interrogatory 1st. I answer that I have made no particular search or inquiry for the ordinance referred to in the direct interrogatories: I have knowledge of the existence of such ordinance, and my recollection is that I was a member of the Board when said ordinance was passed.

In answer to Cross-Interrog. 2d. I have already answered, that there was a harbor master at Grand Gulf, and here again repeat it: Elijah Conklin is known to me; he resides at Grand Gulf; he is a gunsmith by occupation; he has a shop and office in Grand Gulf, on Chesnut street: he is also a Justice of the Peace, and harbor master of port of Grand Gulf.

In answer to Cross-Interrogatory 3d. I have seen flat-boats landing, and moored in the vicinity of the wharf-boat and below it. I have seen flat-boats landing, and moored at the wharf-boat, and immediately below it; since very close below, and at different distances both below and above.

In answer to Cross-Interrog. 4th. I answer that nothing further to the benefit of the libellant occurs to me: I was not present, nor did I see the steamboat sink the flat-boat.

S. C. KEYES.

Sworn to and subscribed before me February 22d, 1853.

JAMES A. MAXWELL,
Judge and Comm'r.

And *Sam'l H. Aby*, a witness for the claimants, having appeared, and after having been duly and legally sworn, on oath says in answer:—

To Interrogatory 1st. I am in my 39th year, and am a merchant by occupation, and am acquainted with the port or landing-place at Grand Gulf.

To Interrog. 2d. I have no knowledge at what time the flat-boat Rainbow, belonging to W. B. Culbertson, arrived at the port of Grand Gulf, nor do I know at what place said flat-boat came in or made fast: I consider below the wharf-boat to be the usual and a proper place for flat-boats to land, but there has been of late years, no regularity observed in the places of landing flat-boats: steamboats also came in and make their landing at that place, that is im-

mediately and for some distance below the wharf-boat, ascending and descending.

In answer to Interrog. 3d. I have no knowledge of the several matters therein set forth.

In answer to Interrog. 4. I have no knowledge of the several matters therein contained.

In answer to Interrog. 5th. I answer I did not see the collision between the boats: I was not present, and have no knowledge of the several matters therein contained, except that I recollect that the wind was blowing very hard on shore, at Grand Gulf, in the morning that the collision is alleged to have taken place.

To Interrog. 6th. I have no knowledge of the several matters contained in this interrogatory.

To Interrog. 7. I have no knowledge of the several matters therein contained.

To Interrog. 8th. I answer that formerly there was a part of the port or landing-place at Grand Gulf appropriated by the Corporation of Grand Gulf for the landing for flat-boats, which was below the steamboat landing, and below where the wharf-boat now lies, but for several years last past, the regulation has been dropped or not acted on, and the flat-boats have been in the habit of making a landing wherever they could come in conveniently, either above or below where the wharf-boat now lies. I do not know, and cannot state particularly how far the flat-boat landing was below where the wharf-boat now lies; nor do I know the length of the wharf-boat. There is a portion of the port or landing-place at Grand Gulf, which has been known for the last season as the "Cotton Landing:" that landing extends about three hundred feet in front from Church street above to Chesnut street below.

To Interrogatory 9. Many years ago there were ordinances and regulations dividing and regulating the Port of Grand Gulf. I cannot state the date of their enactment, and I have no copy to annex with my answer. The ordinances had not been regularly, or otherwise, observed or enforced, but had fallen into disuse and neglect; and both flat-boats and steamboats have, for several years, been in the habit of landing and mooring at the port of Grand Gulf wherever they could conveniently come in and effect a landing.

To Interrog. 10. I answer that nothing further to the advantage of the claimants now occurs to me more than what I have already stated.

To Cross-Interrog. 1. I answer, I did not witness the collision, and was about one hundred yards from the place at the time that the collision alleged to have occurred.

To Cross-Interrog. 2. I can make no definite or satisfactory answer to this interrogatory, as I do not know at what time the collision occurred.

To Cross-Interrogatory 3. I answer that I have no knowledge of

anything having been said to the master of the flat-boat, and can give no definite or satisfactory answer to this interrogatory.

To Cross-Interrog 4. I state that I have made no inquiry of the President of the Selectmen, nor of the Clerk of the Council, relative to said ordinance.

To Cross-Interrogatory 5. I answer that I have no knowledge of the several matters therein contained.

To Cross-Interrog. 6. I answer that I have no knowledge of the several matters therein set forth.

To Cross-Interrog. 7. I answer that I have no knowledge of the several matters therein set forth.

To Cross-Interrog. 8. I answer that I do not know.

So Cross-Interrog. 9. I have no knowledge of the matters set forth in this interrogatory.

To Cross-Interrog. 10. Nothing further of advantage to the libellants occurs to me.

J. H. ABY.

Sworn to and subscribed before me Feb'y 22, 1853.

JAS. A. MAXWELL,
Judge and Comm'r.

And *Q. A. French*, a witness for the claimants, having appeared, and after having been duly and legally sworn, on oath says:

In answer to Interrog. 1. I am 26 years old, and a grocery merchant by occupation, and reside in Grand Gulf, and am well acquainted with the port or landing-place at Grand Gulf.

In answer to Interrogatory 2*d*. I do not know the name of the flat-boat nor the name of the owner, but suppose that the boat was called the Rainbow, and that the libellant, W. B. Culbertson, was owner; the boat landed at Grand Gulf on Sunday evening, but I do not recollect the day of the month, but it was the evening before the Southern Belle arrived from below. It was about sundown when the flat-boat came to. The flat-boat came in and made fast about one hundred yards from the place where the wharf-boat was then and now is lying. The place where said flat-boat came in and was made fast is the usual and proper place for flat-boats to come in and make fast at on the Port of Grand Gulf, although flat-boats often come in both above and below the wharf-boat. Steamboats also often come in and make their landing at the place where said flat-boat was lying, both in ascending and descending.

To Interrog. 3. I answer that I do not remember that anything was said to the owner of the flat-boat about the position of the boat. He made no change in the position of the boat in consequence of anything said to him, if anything was said.

To Interrogatory 4. I answer that I have knowledge of the subject-matter of this interrogatory. About 9 o'clock, P. M., on Sunday evening, and on the same evening that the flat-boat arrived, a

Cincinnati boat, bound up, passed the flat-boat while lying to, got a log in her wheel, and in passing, the but-end of the log struck the bow of the flat-boat and stove it in; the flat-boat swung round with the bow down stream, and she lay in that position until the Southern Belle came up next morning. I was present when the flat-boat was just injured, and remained on board until about 2 o'clock A. M.; during all that time she was leaking and in a sinking condition. In order to find the leak a part of the cargo was thrown overboard. The cargo thrown overboard consisted principally of jars, crocks, jugs, earthenware. I assisted in trying to save the boat and to keep her from sinking.

To Interrogatory 5th. I answer that I did not see the first of the collision of the steamboat and flat-boat. I heard the Southern Belle coming and got up, but did not get to the landing until the crash had taken place. It occurred about 6 o'clock in the morning, just after daylight in the morning of Monday, but I do not remember whether it was on January 3d, 1853, or not. At the time a strong north wind was blowing on shore at Grand Gulf. At that time there was no boat lying at the wharf-boat that I know of or remember; the Southern Belle did in the first instance attempt to make a landing at the wharf-boat. She was prevented from making a landing at the wharf-boat in consequence of the strong north wind blowing her in at the time. After the Southern Belle failed to make a landing at the wharf-boat she dropped down and landed below the wharf-boat, and put her freight out there. I have already stated fully my knowledge as to how the collision occurred.

To Interrog. 6th. I answer that it was just after daylight when the collision occurred; I saw no torches on the Southern Belle, nor were there any lights hanging out on the flat-boat that I observed; I did not get to the place in time to hear any alarm from the flat-boat before the collision, if any was given, of which I have no knowledge.

To Interrog. 7th. I answer that I have some knowledge of the cargo of said flat-boat; so far as I observed, it consisted of earthenware, potatoes, was about all I observed; I was on board trying and assisting to save the boat on the night before the collision; so far, I saw all the cargo on the boat at the time of the collision (except the trunks) was lost in consequence thereof; nothing but the trunks was saved, according to the best of my judgment and opinion, formed from my observation; I state that said flat-boat and cargo, lost in consequence of said collision, was worth about seven hundred and fifty dollars.

To Interrogatory 8th. I answer that there is a part of the port or landing-place at Grand Gulf usually appropriated to the use of flat-boats; said flat-boat landing is above the wharf-boat; the flat-boat landing is about one square, or 300 feet above the wharf-boat; there is another usual flat-boat landing about 2 squares below the wharf-boat; the wharf-boat is about 175 feet long, according to my judg-

ment and opinion; there is a portion or part of the port or landing which is usually known as the "Cotton Landing;" it extends from the upper to the lower flat-boat landing.

To Interrogatory 9. I have understood that there are laws and ordinances dividing and regulating the port of Grand Gulf; I have no copy and can make no definite answer relative to them; so far as I know and have observed, those ordinances and regulations have fallen into disuse and neglect.

To Interrog. 10. I do not recollect of anything further to the advantage of the owners of the steamboat Southern Belle, except that in my opinion there was no intention on the part of the officer of the boat to do any injury, and that the steamboat was blown by force of the wind to the shore when the collision took place.

To Cross-Interrog. 1. I answer that I did not witness the collision, and was about 110 yards off when it occurred.

To Cross-Interrog. 2. It was broad daylight when the collision occurred; it was plenty light to have seen a flat-boat one hundred yards or more.

To Cross-Interrog. 3. I answer that I have no recollection of having heard anything said to the master of the flat-boat about the place where she was moored.

To Cross-Interrog. 4. I answer that I have made no inquiry of any one as to the ordinance referred to.

To Cross-Interrog. 5. I answer that I did assist in saving the flat-boat, and in attempting to repair the damage; there were only two persons, myself and Jno. Hughes, who assisted on board; I left the flat-boat at about 2 o'clock A. M.; the flat-boat was not safe nor secure when I left her; the leak had been partially stopped, but not entirely.

To Cross-Interrog. 6. I answer that no part of the cargo was thrown overboard except the stoneware; that was in the bow where the leak was.

To Cross-Interrog. 7. When the Southern Belle struck the flat-boat it was light enough to have distinguished the flat-boat at a distance of one hundred yards and more, as it was after daylight; at the time of the collision I could have seen the flat-boat at the distance of quarter of a mile.

To Cross-Interrog. 8. I answer that day had broken at least half an hour before the collision.

To Cross-Interrog. 9. I answer that my knowledge of what the cargo consisted of is derived from my observation at the time I was on the boat in helping to save her after the first accident; there was nothing saved except the trunks.

To Cross-Interrog. 10. I answer that nothing further occurs to me to the advantage of the libellants, except that I now remember that there was a small lot of bulk corn on board, and which I have not before mentioned as a part of the cargo, all of which was lost,

but this does not vary my estimate of the value of the boat and cargo herein before stated at $750 00.

Q. A. FRENCH.

Sworn and subscribed before me Feb'y 22d, 1853.

JAMES A. MAXWELL,
Judge & Comm'r.

And *Simeon Shelden*, a witness for the claimants, having appeared, and, after being duly and legally sworn, on oath says in answer—

To Interrog. 1. I am 34 years old; am occupied in keeping the wharf-boat at Grand Gulf; I am acquainted with the port and landing-place at Grand Gulf.

To Interrog. 2. I answer that the flat-boat Rainbow, belonging to W. M. Culbertson, the port of Grand Gulf on Sunday evening before the damage done to her, but the precise day of the month I do not remember; the first that I saw of the flat she was lying to and made fast at the landing below the wharf-boat, about 125 to 150 feet below the mouth of the street next below the street called Church Street; that is, the flat-boat came to and was fastened about that distance below the next street below Church Street; the flat-boat was landed below the wharf-boat, and from 150 to 200 feet below, the precise distance I cannot state; that was not the usual place for flat-boats to come to and to make fast at, although it is designated as the proper place for landing of flat-boats by the ordinances of the Corporation of Grand Gulf, passed many years ago; steamboats very frequently come in and make their landings at that place, both ascending and descending.

To Interrog. 3. I answer that there was something said to the master of said flat-boat about the position of his boat. After he had been injured by the drift, and after the boat had been secured, as everybody thought, I told him that he was not in the proper place, that he was liable to be sunk by the first raft that came along, and that he was in the way of steamboats, and liable to be injured by them; that it was the cotton landing, and that he had better move his boat down below where the other flat-boats were. The master of said flat-boat made no change in the position of his boat, in consequence of what was so said to him by me.

To Interrogatory 4th. I answer that on the night of the day that said flat-boat landed as aforesaid, I heard a crash, and went down immediately and ascertained that the drift had run into the boat, and knocked a hole in the bow and broke the bow line, and she swung round, holding on to the stern, bow down. The boat, in consequence of the injury, was leaking; I could hear the water running into her, altho' I did not go aboard. The accident occurred at about from 7 to 9 o'clock at night, after supper. There was a good deal of earthenware thrown overboard.

To Interrogatory 5th. I answer that I did not see the collision between said flat-boat and the Southern Belle; I was in bed at the time. I do not know at what hour the collision occurred. The wind at the time was blowing very strong from a little west of north, and against the shore on this side of the river. At the time of the collision there was another boat lying at the wharf-boat, putting out freight. It was the Atlantic, to the best of my recollection. I do not know whether the Southern Belle attempted to make a landing at the wharf-boat, as I was in bed at the time, being unwell. I do not know what course the Southern Belle then took to effect a landing; I know nothing as to the particulars, and how the collision between the boats occurred.

To Interrogatory 6. I answer that I do not know whether it was daylight when the collision occurred or not, as I was not up. I saw no light on either boat, nor did I hear any cry of alarm before the collision.

To Interrog. 7. I have very little knowledge of the cargo of said flat-boat. I saw some earthenware thrown overboard. I saw some ears of corn floating after the injury, and saw several barrels of apples that were brought up to town to be sold. This is about all I know of the cargo. The cargo on board of the flat-boat was all lost in consequence of the collision, with the exception of the apples aforesaid. I have no knowledge or idea of the value of the flat-boat and cargo that was lost.

To Interrogatory 8. There was no part of the port or landing-place at Grand Gulf appropriated to the use of flat-boats, although there is such provision and directions in the ordinances of the Select-men; but they, for the last five or six years, have been disregarded, and flat-boats have been in the habit of landing wherever they pleased, or could effect a landing. The flat-boat landing, as designated in the ordinances, is below the wharf-boat. The lower end of the wharf-boat is from 20 to 40 feet above the upper limit of the flat-boat landing, as designated by the ordinances. I state the distance on observation and conjecture, as I have made no measurement. The wharf-boat is 262 feet long, or very nearly so. There is no portion of the landing-place designated by the ordinances as the "cotton landing," but custom has designated that portion of bank to which cotton is haul'd and put aboard as the "cotton landing." The cotton landing has varied from place to place. At the time of the collision, the cotton landing extended from immediately below the wharf-boat down in the neighborhood of 200 feet, or to the length of an ordinary steamboat.

To Interrogatory 9. There are ordinances which divide and regulate the port of Grand Gulf. I do not know the date of their passage, but am of the impression that it was as far back as 1832, and I have no copy to annex. Those ordinances have not been regularly observed nor enforced, but have fallen nearly entirely into disuse and neglect.

To Interrogatory 10. I answer that I know nothing further, except that the property saved from the wreck of the flat-boat was sold at public auction, for and on account of the owner, and brought $35 00 for 28½ barrels of apples. The owner also took away the rigging, lines, &c., of the boat, the value of which I do not know.

To Cross-interrogatory 1st. I answer that I did not witness the collision.

To Cross-interrogatory 2. I do not know how light it was when the collision occurred. I was in bed at the time, and somewhat unwell.

To Cross-interrogatory 3d. All that was said to the owner of the flat-boat about the place where he was moored, within my knowledge, was said by myself. I was not the officer of the port. The conversation occurred the evening before the collision, and soon after the boat was moored and after the damage from the drift.

To Cross-interrog. 4. Having stated that there is an ordinance respecting the places for landing at Grand Gulf, I have no answer to make to this cross-interrogatory.

To Cross-Interrog. 5. I answer that I rendered assistance in saving the flat-boat after the damage done by the drift, as in furnishing a light and oakum, and handling the lines, although I was not on board, being too unwell to do much on board; French and Hughes, Rob't Smith, and two persons, strangers to me, were all on board assisting, and probably several others whom I do not now remember, were also on board assisting; French and Hughes seemed to be the most efficient. I left the boat about 9 or 10 o'clock, P. M.; I was not on board, but it was proclaimed by those on board that the flat-boat was safe, and that the leak had been stopped; after which I left and went home.

To Cross-Interrogatory 6. I answer that I saw no part of the cargo thrown over, except a part of the stoneware.

To Cross-Interrogatory 7. I answer that I can give no definite answer as to whether it was sufficiently light to see the flat-boat at any particular distance, as I was not up at the time of the collison, and do not know whether it was light or not.

To Cross-Interrog. 8. I do not know whether the day had begun to break or not at the time of the collison.

To Cross-Interrog. 9. I answer that my knowledge of the cargo is derived from seeing part thrown overboard as hereinbefore stated, and seeing the 28½ barrels of apples taken up to town and sold. There were a few pieces of earthenware thrown out on the bank, but I do not know what became of it; the apples were sold as before stated, and the lines were taken away by the owner of the flat-boat.

To Cross-Interrog. 10. I answer that I know nothing further that I recollect of advantage to the libellant.

S. SHELDEN.

Sworn to and subscribed before me February 22d, 1853.

JAMES A. MAXWELL,
Judge and Comm'r.

And *L. W. Matthews*, a witness for the owners of the steamboat Southern Belle, claimants, having appeared, and after having been by me duly and legally sworn, on oath says, in answer

To Interrogatory 1st. I am 38 years old; by occupation a clerk and salesman at the present time, and I reside at Grand Gulf; I am acquainted with the port and landing-place at Grand Gulf.

To Interrogatory 2d. I do not particularly remember the time at which the flat-boat Rainbow, belonging to W. B. Culbertson, arrived in the port of Grand Gulf; my impression is that it was in the afternoon, the precise day I cannot state; but it was on the evening of the same day that said flat-boat was injured by drift. Said boat came in and made fast below the wharf-boat, about 175 feet where she first tied up below the wharf-boat. That is not the usual or proper place for flat-boats to come in or make fast at in the port of Grand Gulf. Steamboats both ascending and descending come in and make their landings at that place very frequently.

To Interrog. 3d. There was something said to the owner of said flat-boat about the position of his boat. After the boat had been run into and injured by the drift as hereinafter stated, those who went to the assistance of the owner of the boat advised him that his boat was in a dangerous place, liable to be run into by rafts and drifts, and that it would in all probability be sunk before morning, and advised him to move further down. The master of the flat-boat made no change in the position of his boat in consequence of what was said to him.

To Interrogatory 4th. I state that I have knowledge of an accident that occured to said flat-boat soon after her arrival, but I cannot state positively that it was on the same day of her arrival; but my impression and belief is that it was on the same day, or rather on the night of the same day. Early in the night and a short time after supper, I was sitting in the social hall of the wharf-boat, and I heard an alarm that the flat-boat was sinking. I immediately with others ran down to the flat-boat; I found that she had been run into by a drift log; the log had run into one corner of the bow and broken in the gunwale plank; the water was pouring in very fast and she was in a sinking condition. The bow of the boat, where the snag or drift struck, was full of earthenware; and in order to get at the leak, the greater portion of it was thrown overboard by those assisting to stop the leak.

To Interrogatory 5. I answer that I did not see the collision between the flat-boat and the Southern Belle, on the morning of January 3d last, but heard the crash, as I was on watch on the wharf-boat at the time, (being at that time receiving and discharging clerk on the wharf-boat.) I was receiving freight from the Atlantic at the time, and was in the inside of the wharf-boat, and not in a position to see the collision. The collision occurred a little before day according to the best of my recollection. At the time, the wind was blowing a gale right on shore, or rather quartering from north

of north-west or nearly so. At the time the steamboat Atlantic was lying at the wharf-boat, and discharging freight on the wharf-boat. When the Southern Belle came up, I did not see her, as I was on the inside receiving freight from the Atlantic, and cannot state certainly whether she in the first instance attempted to make a landing at the wharf-boat or not. But my belief is that she did attempt to make a landing on the outside of the Atlantic, at that time fastened to the wharf-boat. From the sound of her engine bells, and other noises, I infer that she came up abreast and outside of the Atlantic. The Southern Belle was in the habit of landing at the wharf-boat going up. These are some of the facts that induce me to believe that the Southern Belle attempted to land at the wharf-boat on that occasion. I do not know why the Southern Belle did not make a landing at the wharf-boat. After the steamboat came up alongside the Atlantic, she backed down, and I know nothing more of her until I heard the crash, which was in a few seconds. I believe I have stated fully all my knowledge as to how the collision between the Southern Belle and the flat-boat took place.

To Interrogatory 6. I answer that it was not daylight when the collision happened. I have no knowledge whether the torches were lighted on the Southern Belle, or whether there was any light on the flat-boat before or at the time of the collision. I heard no cry of alarm from the flat-boat before the collision.

To Interrogatory 7. I know nothing of the cargo of said flat-boat, of what it consisted, &c., except the earthernware thrown overboard. I have no knowledge as to what part of the cargo was lost or saved. I have no knowledge of the value of said cargo and flat-boat.

To Interrogatory 8. I answer, there is a part of the port or landing-place at Grand Gulf at which it is usual for flat-boats to land, and usually appropriated for that use. There are two places, one above and the other below the steamboat landing and the wharf-boat at which flat-boats usually come in and make fast. The lower flat-boat landing, according to custom and usage, is below the wharf-boat about 200 or 250 feet. The wharf-boat is about 275 feet long. There is a portion of the landing-place at Grand Gulf usually called the "Cotton Landing;" it commences immediately below the wharf-boat, and extends down about 200 feet.

To Interrogatory 9. I answer, that I have heard that there are ordinances regulating and dividing the port of Grand Gulf. I have no knowledge of them, and have no copy to annex. The ordinances and regulations have not been regularly enforced or observed, but have fallen into neglect and disuse, except for the leasing of the landing and collecting wharfage, &c. &c.

To Interrogatory 10. Nothing further to the advantage of the owners of the Southern Belle, except that Captain White and officers of said boat are skilful navigators, and very prudent and careful in the management of the boat.

To Cross-Interrog. 1st. I answer I did not witness the collision. I was between 250 and 300 feet off at the time of the collision.

To Cross-Interrog. 2d. I cannot answer this cross-interrogatory definitely or satisfactorily. At the time, I was inside of the wharf-boat, receiving and checking off freight by a lantern, and did not observe as to how light it was outside.

To Cross-Interrog. 3d. I answer, that the persons who spoke to the owner of the flat-boat, and advised him to change his berth, were those assisting in saving the flat-boat after the injury from the snag or drift. They had no authority over the port within my knowledge, nor were they officers thereof. That advice was given at the time that they were helping to save the flat-boat, and after they had gotten through.

To Cross-Interrogatory 4. I answer that I have made no inquiry of the President or Clerk of the Council for the ordinances regulating the landing, and have no copy.

To Cross-Interrog. 5. I answer that I assisted in saving the flat-boat the evening before the collision with the Southern Belle, as in handling the lines, furnishing oakum from the wharf-boat, and otherwise; but I was not aboard of the flat-boat. There were some 12 or 15 persons assisting. I left about one hour after the accident. From what was said by those on board, I considered the boat safe when I left her; as the leak had been stopped, and they were running the pump. I considered the boat safe from that injury, but I did not consider her position safe. The injury from the drift had parted her bow-lines, and she had swung round, and was lying bow down, and exposed to a similar damage.

To Cross-Interrogatory 6. I answer, that I saw no part of the cargo thrown over except the stone or earthenware.

To Cross-Interrog. 7th. I cannot answer this cross-interrogatory satisfactorily, as I was inside of the wharf-boat at the time, and did not observe.

To Cross-Interrog. 9. I answer, that I have no sufficient knowledge of the matters of this cross-interrogatory to make any definite answer thereto. All the cargo that I saw was the stoneware thrown overboard, and a few barrels of apples taken out during the day; and I have no idea of the value of the cargo saved. The apples were sold at auction, but do not know for how much.

Cross-Int'y 8. I don't think the day had begun to break before the collision.

To Cross-Interrogatory 10. I answer, that nothing further to the benefit of the libellants now occurs to me.

LOUIS W. MATTHEWS.

Sworn to and subscribed before me February 23d, 1853.

JAMES A. MAXWELL,
Judge and Comm'r.

And *George W. Smith*, a witness for the claimants, having

appeared, and after having been duly and legally sworn, on oath says—

In answer to

Interrogatory 1st. I am aged forty-eight years. I reside at Grand Gulf, and am engaged and occupied in keeping a hotel in the wharf-boat, and am acquainted with the port and landing of Grand Gulf generally, but particularly with the different lines limits of the different landings.

To Interrogatory 2d. I answer that the flat-boat Rainbow arrived at Grand Gulf on a Sunday evening, but I do not remember the day of the month said flat-boat first made fast to and swung round from the wharf-boat, and then dropped down and brought up at the bank, and made fast below the wharf-boat, about one hundred and fifty yards as I judge. I do not know whether that is the usual or proper place for flat-boats to come in and make fast at. I have observed a good many stop there. I have seen steamboats frequently both ascending and descending come in and make their landings at the same place.

To Interrogatory 3d. I answer that I heard nothing said to the master of said flat-boat on the subject of the position of his boat as indicated in this interrogatory. I am not aware that the Captain or owner of the flat-boat made any change in the position of his boat in consequence of anything that was said to him.

To Interrogatory 4th. I answer that I have knowledge of the accident that occurred to said boat on the night of the day on which she arrived at the landing at Grand Gulf. I was standing on the forward part of the old boiler deck of the wharf-boat (her bow lying down stream), and I heard a tremendous crash; looked up, and saw that the flat-boat was injured and had broken loose, and was swinging round her bow down stream. I asked if they wanted help, and was answered that they did. I and others immediately went down to their assistance. I did not go on board; one of the forward planks was started by the jar from the drift, and the boat was leaking. This occurred at about 8 o'clock P. M., as near as I can recollect. There was a quantity of stoneware in the front part of the boat, some of which was thrown overboard to get at the leak.

To Interrogatory 5. I answer that I saw the collision between said flat-boat and the steamboat Southern Belle, early one morning in the first of January last, but the precise day of the month I do not now remember. The collision occurred at daylight in the morning. The wind at the time was blowing almost a gale from northwest, and on shore at this place. The steamboat Atlantic was at the time lying at the wharf-boat. I suppose the Southern Belle attempted to land at the wharf-boat, or above, as she came up along opposite to the Atlantic, and as high up as the wharf-boat. I suppose that the reason why the Southern Belle did not land at the wharf-boat is, that owing to the high state of the wind, they could not bring her in safely, and without damage to the Southern Belle,

the Atlantic, or the wharf-boat. I heard nothing said as to the reason why the Southern Belle did not land at the wharf-boat. I form my opinion, above expressed, from what I saw. The Southern Belle having failed to effect a landing at the wharf-boat, then backed down with the intention, as I thought, to come in as near under the stern of the Atlantic as was safe. About the time she cleared the stem of the Atlantic a flaw of wind struck her and threw her over, and careened her down very much, and she seemed to be almost unmanageable; in this condition she went broadside into shore, and crushed the flat-boat Rainbow. The foregoing is, I believe, a full and particular statement of the manner and circumstances of said collision, so far as I saw.

To Interrogatory 6th. I answer that it was just about daylight when the collision happened. There was a torch lighted on the Southern Belle at the time. I saw no light on the flat-boat immediately before or at the time of the collision. I heard no cry nor alarm from the flat-boat before the collision.

To Interrogatory 7. I answer that I know nothing of the cargo of said flat-boat only on hearsay, except the stoneware that I saw thrown overboard on the night before the collision, and a lot of apples that were taken out after the collision. All the cargo on board of the flat-boat at the time of the collision was lost, except the apples aforesaid. I know nothing of the value of the said boat and of the cargo lost.

To Interrogatory 8. I answer that I believe there are Laws and Ordinances of the President and Selectmen of the Corporation of Grand Gulf which designate certain parts of the port or landing at Grand Gulf for the landing of flat-boats, but I do not think the landing thus designated is now usually occupied by flat-boats. The most usual place for the landing of flat-boats at present is above the wharf-boat; the sometimes land below her; of late years there has been very little uniformity as to the flat-boat landing, but flat-boats have been in the habit of coming in and mooring wherever they could most conveniently land. The most usual landing below for flat-boats is about 300 or 400 yards below the wharf-boat. The wharf-boat is about 280 feet long. There is a portion of the shore called the cotton-landing, and that part which has been used this season as a cotton landing extends from opposite the wharf-boat down, say 100 yards or more.

Interrogatory 9. There are ordinances of the Corporation to divide and regulate the port of Grand Gulf; I cannot say when they were passed, but many years ago. I have no copy to annex. In late years the ordinances have not been regularly observed or enforced, but have measurably fallen into disuse and neglect.

To Interrogatory 10. Nothing further within my knowledge of advantage to the def'ts now occurs to me.

To Cross-Interrog. 1. I answer that I did witness the collision. I was standing about 150 yards from the flat-boat at the time of the collision, as nearly as I can judge without measurement.

To Cross-Interrog. 2. I answer that day had just broke; it was not clear daylight, but light enough to see distinctly. It was light enough to see the flat-boat at the distance of one hundred yards and more. I could at that time see the opposite side of the river distinctly.

To Cross-interrogatory 3d. I answer that I do not remember to have heard anything said to the owner of the flat-boat about the place where she was moored. I do not think the flat-boat was removed from her position after the injury from the drift up to the time of the collision.

To Cross-interrog. 4. I have made no inquiry of the President and Selectmen, nor of the Clerk of the Town Council, for the ordinance referred to herein.

To Cross-interrog. 5. I went with those who rendered assistance to the flat-boat after the injury from the drift, but did not go aboard, as there were as many on board as could be of any service. I cannot state how many there were assisting; I only remember two particularly, French and Hughes. I left at 8 or 9 o'clock, or thereabouts. The flat-boat was represented by those on board to be safe when I left, and it was also proclaimed that the leak had been stopped.

To Cross-interrog. 6. No part of the cargo of the flat-boat was thrown overboard, except the stoneware, that I saw.

To Cross-interrog. 7. I answer that it was light enough when the Southern Belle struck the flat-boat to distinguish the flat-boat at a distance of one hundred yards or more. The flat-boat could have been seen if she had been lying at a quarter distance.

To Cross-interrog. 8. I answer that the day had begun to break before the collision.

To Cross-interrogatory 9. I have no knowledge as to what the cargo of said boat consisted, except the stoneware lying in the bow of the boat, a part of which was thrown overboard, as before stated, and some 25 or 30 barrels of apples which were taken out of the wreck after the collision, and sold in town. I do not know certainly, but think the apples sold for about one dollar per barrel.

In answer to Cross-interrog. 10. I say that I know of nothing else that I now remember of advantage to the libellants.

GEO. W. SMITH.

Sworn to and subscribed before me, February 23d, 1853.

JAMES A. MAXWELL,
Judge and Comm'r.

And *John Dan'l Smith*, a witness for the claimants and owners of the steamboat Southern Belle, having appeared, and after having been duly and legally sworn, on oath says, in answer to

Interrogatory 1. I am 24 years of age; I am a commercial clerk,

and reside at Grand Gulf, and am acquainted with the landing-place at Grand Gulf.

To Interrog. 2. I do not know at what time the flat-boat Rainbow made a landing at Grand Gulf. The first that I know of the flat-boat, was on hearing the alarm that she was sinking, on Sunday night, about 8 o'clock P. M. I went down to the place where she lay, and saw her, but did not go aboard. She was then lying nearly opposite Mrs. Cintuses house, and below the wharf-boat, about 225 feet, as near as I can judge. That is a usual place for flat-boats to come in and make fast at, but flat-boats very often land above and below that place and the wharf-boat. Steamboats also very often come in and make a landing at that place, both ascending and descending.

To Interrogatory 3d. I have no knowledge of anything having been said to the owner of the flat-boat Rainbow as to the position of his boat, nor do I know whether he removed his boat in consequence of anything that was said to him.

To Interrog. 4. I did not see any injury to the flat-boat in consequence of which she was made to leak, and was otherwise injured, but on the night of the alleged injury I went down to the flat-boat. I did not observe the nature or the extent of the injury, nor do I know at what time it occurred. I heard them throwing something overboard, and was told that it was jugs.

To Interrog. 5. I answer that I did not see the collision between the Southern Belle and the flat-boat, as I did not go down to the landing until after the Southern Belle had gone up, and I know nothing of the several matters propounded in this interrogatory.

To Interrog. 6. I answer that I have no knowledge of the several matters propounded in this interrogatory.

To Interrogatory 7. I answer that I have no knowledge of the several matters propounded in this interrogatory, except that I know that some 30 barrels of apples were saved from the wreck of the flat-boat, and were sold at auction, but do not know for how much the apples sold.

To Interrog. 8. If there be any part or portion of the port or landing at Grand Gulf usually appropriated to the use of flat-boats, I am not aware of it. According to my observation, flat-boats land and make fast both above and below the wharf-boat, wherever they can most conveniently effect a landing. Flat-boats very often land close to the wharf-boat. I do not know the length of the wharf-boat. There is a part and portion of the landing at Grand Gulf known as the "cotton landing." The present cotton landing extends from the lower end of the wharf-boat down as far as where the flat-boat was lying. Upon this landing cotton is usually hauled out and rolled on the steamboats.

To Interrog. 9. I have no knowledge of any laws or ordinances dividing and regulating the port or landing of Grand Gulf, and so far as I have observed, there has been no ordinance or regulation

observed in the places of landing of steamboats or flat-boats. If there be any such laws, ordinances or regulations, they have not been regularly observed, but have fallen into disuse and neglect.

To Interrogatory 10. I answer that nothing further of advantage to the defendants, owners of the Southern Belle, now occurs to me, except in a conversation that I had with Mr. Culbertson, the owner of the flat-boat, after the collision, he stated that his loss amounted to about $2,500.

To Cross-interrog. 1. I answer I did not witness the collision. I was in bed at the time, and probably asleep, and knew nothing of it until after the boat gone up.

To Cross-interrog. 2. I answer that I heard no conversation, and have no knowledge on the subject.

To Cross-interrog. 3d. I answer that I heard no such conversation, and have no knowledge on the subject.

To Cross-interrog. 4. I answer that I have made no inquiry of any one about said ordinance.

To Cross-interrog. 5. I answer I did not assist in repairing the flat-boat, or in saving her. I do not know how many persons were assisting. Those on board were still trying to stop the leak when I left, and the leak had not been stopped when I left.

To Cross-interrog. 6. I answer I do not know. I heard something splashing in the water, and was told that it was jugs thrown over.

To Cross-interrog. 7. I answer that I have no knowledge, as I was in bed at the time of the collision.

To Cross-interrog. 8. I answer that I do not know. I was not up at the time.

To Cross-interrog. 9. I answer that I have no knowledge of the cargo of the flat-boat, or of what it consisted, except the few barrels of apples saved from the wreck, and sold, as before stated.

To Cross-interrog. 10. Nothing further to the advantage of the libellant now occurs to me.

J. D. SMITH.

Sworn and subscribed before me February 24, 1853.

JAMES A. MAXWELL,
Judge and Comm'r.

THE STATE OF MISSISSIPPI,
Claiborne County:

I, James A. Maxwell, Judge of the Probate Court in and for said County, do hereby certify, that in pursuance of a commission from the District Court of the United States, holding sessions at New Orleans, in and for the Eastern District of Louisiana, directed to any Judge, Justice of the Peace, or U. S. Commissioner, at Grand Gulf, Mi., I have called and caused to come before me, at my office, in Grand Gulf aforesaid, S. C. Keyes, S. H. Aby, S. Shelden, Geo.

W. Smith, L. W. Matthews, Q. A. French, and Jno. D. Smith, witnesses therein named, and examined them severally and separately on oath, by me duly and legally first administered to them, severally and respectively, touching and concerning certain matters and things in a cause now depending in said Court, wherein Wm. B. Culbertson is libellant, and the owners of the Steamboat "Southern Belle" (libelled) are claimants; and in answer to the several interrogatories and cross-interrogatories propounded to them, and accompanying said commission. That I have reduced their several examinations, on oath as aforesaid, to writing, on the days and at the times therein stated, which said examinations by said witnesses, severally and respectively sworn to and subscribed before me, I herewith return, enclosed to said Court, together with said commission, and the interrogatories and cross-interrogatories therewith.

Given and certified under my hand and seal at Grand
[SEAL.] Gulf, Miss., on this 25th day of February, A. D. 1853.

JAMES A. MAXWELL,
Judge & Comm'r.

Commissioner's Fee.

For taking and certifying the testimony of 7 witnesses,
$10 e. $70 00

Which the Clerk will please tax.

Feb. 25, 1853.

JAS. A. MAXWELL,
Comm'r.

U. S. DISTRICT COURT:

WM. B. CULBERTSON
vs.
ST'R SOUTHERN BELLE. } No. 6835.

6th. Commission and interrogatories and deposition of W. R. Macfarlane returned by J. A Maxwell.

DISTRICT COURT OF UNITED STATES,
holding sessions at New Orleans, in and for the Eastern District of Louisiana:

To James A. Maxwell, Judge of Probate Court, Grand Gulf, Mi.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to before you William B. McFarlane, and him duly examine on oath, touching and concerning certain matters and things in a case now depending in said Court, wherein William B. Culbertson is libellant, and the owners of the steamer "Southern Belle" are claimants, and the said examinations so taken and reduced to writing you

certify under your hand and seal and send enclosed to this Court without delay, to be read in evidence on the trial of said cause; and send also this writ.

Witness the Honorable Theo. H. McCaleb, Judge of the District Court of the United States at the city of New [SEAL.] Orleans, this fourth day of March, Anno Domini 1853, and the seventy-sixth year of the Independence of the United States of America.

N. R. JENNINGS,
Clerk.

ROB'T M. LUSHER,
D'y Clerk.

WILLIAM B. CULBERTSON
vs.
STEAMBOAT SOUTHERN BELLE.

Interrogatories to be propounded to Wm. R. McFarlane, a material witness for respondent.

1. Where do you reside? What is your age? Occupation? Are you acquainted with the port or landing-place at Grand Gulf, Mississippi?

2. Please state the width of Main Street in said Grand Gulf, also of the square next below Main Street; also the width of Church Street and of the square next below Church street; also the width of Chesnut Street, and of the square next below Chesnut Street; also the width of Cedar Street and of the square next below Cedar Street. Do the above named streets run to the river? Have you a plan or map of the landing-place at Grand Gulf, in front of the said streets or squares? If so, please annex the same for reference and as a part of your answer.

3. Did you witness the collision between the steamboat "Southern Belle" and the flat-boat called the "Rainbow," belonging to the said Wm. B. Culbertson, on the morning of the 3d of January, 1853? If so, please state where you were standing at the time; at what point or place was the wharf-boat lying? Where was the said flat-boat lying, and what was the distance between the said wharf-boat and the said flat-boat? that is to say, from the lower end of the wharf-boat to the flat-boat, &c.; was the distance between the wharf-boat and the flat-boat sufficient to admit the Southern Belle to come in and land at the shore or bank in ordinary weather?

4. Are you acquainted with the managemont of steamboats on the River Mississippi? If so, please state how you acquired your knowledge in respect to such management.

5. On the morning of the said 3d January, 1853, and before the collision, did the Southern Belle attempt first to make a landing at the wharf-boat? If so, please state the reason, according to your observation and knowledge on such subjects, why she did not land

at the said wharf-boat; state generally all that occurred within your own observation from the time the Southern Belle came up till the collision. Please state also what in your opinion was the cause or occasion of the said collision, and the facts, within your own observation and knowledge, on which your opinion is founded.

6. Do you know of anything further that can be of advantage to the respondents? If so, please state the same as fully and particularly as if specially interrogated in respect thereto.

HUNTON & BROTHERS,
Proctors for Respondents.

The foregoing interrogatories were by me propounded to the witness Wm. R. McFarlane, and his answers thereto on oath are hereunto annexed and herewith returned.

JAS. A. MAXWELL,
Judge and Comm'r.

No Cross-Interrogatories.

BENJAMIN & MICOU.

Exhibit (A), with Deposition of W. R. McFarlane.

WM. R. MACFARLANE.

[For plat marked exhibit (*A*), see original, page 177.]

I certify that the annexed is a true copy from the plat and plan of the original survey of the town of Grand Gulf, Miss., now in the possession of the Clerk of the President and Selectmen of the Corporation of Grand Gulf aforesaid, and truly representing the position of certain streets and squares in said town.

JAS. A. MAXWELL,
Com.

DISTRICT COURT OF THE UNITED STATES,
Eastern District of Louisiana, having Sessions at New Orleans, La.

WILLIAM B. CULBERTSON, Libellant,
vs.
The Owners of the Steamboat "SOUTHERN BELLE," Claimants.
In Admiralty.

The deposition of William R. McFarlane, a witness for the claimants, taken before James A. Maxwell, Commissioner of said Court at Grand Gulf, State of Mississippi, to be read in evidence on the trial of the above cause.

And the said William R. McFarlane having appeared before me, at my office at Grand Gulf, on this 24th day of March, 1853, and

having been by me duly and legally sworn to speak and declare the truth, the whole truth, and nothing but the truth within his knowledge, in answer to the several interrogatories propounded to him, on oath as aforesaid says, in answer

To Interrogatory 1. I reside at Grand Gulf, Mississippi. I am in my thirty-sixth year, and am by occupation a Commercial Clerk. I am acquainted with the port or landing-place at Grand Gulf, Mississippi.

To Interrogatory 2. Main Street, in the town of Grand Gulf, is seventy-two feet wide (72 feet); the square next below Main Street is 260 feet wide; Church Street is 60 feet wide, and the square next below Church is 300 feet wide; Chesnut Street is 60 feet wide, and the square next below Chesnut Street is 300 feet; Cedar Street is 60 feet wide, and the square next below Cedar Street is 300 feet wide.

In further answer

To Interrogatory 2. All the above-named streets run to the Mississippi River from south-east to north-west. A plan or map of the landing-place at Grand Gulf, as prepared by the Commissioner, is now presented to me, marked exhibit (*A*), and upon which I have written my name. I have examined the same, and compared it with the original map and plan of the survey and location of the town of Grand Gulf, now in the possession of the Clerk of the President and Selectmen of the Corporation of Grand Gulf, and find said exhibit (*A*) truly copied therefrom, and the names of streets, Nos. squares, width of streets and of squares, &c., truly copied and represented in said exhibit (*A*), and which I hereunto annex as part of my answer to this interrogatory. Since the original survey of said town the bank has caved very much, and up to the line represented in pencil mark in said diagram, as nearly as I can judge from close observation, having made no survey thereof.

To Interrogatory 3. On or about the 3d of January last I witnessed the collision between the steamboat Southern Belle and flat-boat lying at the landing at Grand Gulf. I did not know the name of the flat-boat, nor to whom she belonged, until I heard afterwards that the flat-boat belonged to Culbertson. I was standing at the time on the boiler deck of the wharf-boat Bulletin, her bow being down stream. At the time the wharf-boat was lying in front of square No. 3, as represented on said diagram, exhibit (*A*), between Church and Chesnut Street, with her bow extending near Chesnut Street. I cannot state the precise position of the flat-boat at the time of the collision; my impression is that the flat-boat was lying between Chesnut Street and Cedar Street, and nearest to Cedar Street. I did not measure the distance between the wharf-boat and the flat-boat, and cannot give any definite idea of the precise distance. I state, from observation merely, that the distance between the lower end of the wharf-boat to the flat-boat was 275 to 300 feet. The distance be-

tween the wharf-boat and the flat-boat was not sufficient to admit the Southern Belle to come in and land at the bank in ordinary weather without risk. She might have effected such landing in ordinary weather without damage, but it would not have been safe to attempt it.

To Interrogatory 4. I am acquainted with the management of steamboats on the river Mississippi. I acquired my knowledge by having run on the river between three & four years at different times, as clerk and as commander at different times.

To Interrogatory 5. On the morning of the 3d of January, 1853, or about that day, and before the collision, the Southern Belle did attempt to make a landing at the wharf-boat. I will state generally all that occurred within my knowledge and observation from the time that the Southern Belle came up until the collision. The Southern Belle came up in the usual course along shore, passing the flat-boat on the right 100 feet or more, and passed up on the outside of the steamboat Atlantic, at the time lying to the wharf-boat and discharging freight. She went up abreast the Atlantic, and some distance off. My belief at the time, judging from the movement of the Southern Belle was, that she was about to land outside of the *Atlantic*, or somewhere above. The next thing I observed, she was dropping down. The wind at the time blowing very strong on shore, the boat was listed over very much, and appeared perfectly unmanageable, and in that situation she was blown broadside into shore against the flat-boat, crushing and sinking her instantly to the roof. I was of opinion at the time that it was the intention of the Southern Belle to make a landing below the wharf-boat, after she commenced going down as before stated. In my opinion, from what I observed, as above stated, the collision was caused by the stress of wind, rendering the steamboat Southern Belle unmanageable, and propelling her broadside against the flat-boat. She came up so close outside of the Atlantic that it seemed to me impossible for her to have gotten below the flat-boat without damage, as the wind was so strong as to throw the steamboat broadside on shore. The collision, so far as I observed, did not appear to be intentional on the part of the managers of the steamboat, and appeared unavoidable, taking into consideration the position of the different boats and the state of the wind.

To Interrogatory 6th. Nothing further within my knowledge and to the benefit of the claimants more than what I have already stated, now occurs to me.

WM. R. McFARLANE.

Sworn to and subscribed before me March 24th, 1853.

JAMES A. MAXWELL,
Comm'r.

THE STATE OF MISSISSIPPI,
Claiborne County.

I, James A. Maxwell, Judge of the Probate Court in and for said county, and Commissioner named in the annexed Commission from the District Court of the United States holding sessions at New Orleans in and for the Eastern District of Louisiana, hereby certify that I have called and caused to come before me at my office at Grand Gulf, Mississippi, on this 24th day of March, A. D. 1853, William R. McFarlane, the witness named in said Commission, and have diligently examined him on oath, concerning certain matters and things in a case now pending in said Court, wherein Wm. B. Culbertson is libellant, and the owners of the steamer "Southern Belle" are claimants, and in answer to the several interrogatories propounded to him, and which are herewith returned; and that I have taken said examination and reduced the same to writing, which by the said witness sworn to and subscribed before me, I here certify under my hand and seal, and send enclosed to said Court to be read in evidence on trial of said cause, as also said Commission.

Given under my hand and seal at Grand Gulf, this 24th day of March, A. D. 1853.

JAMES A. MAXWELL,
Judge and Comm'r.

Commissioner's Fees.

For taking and certifying depo.	$10 00
For copy of Map, &c.	2 50
	$12 50

which the Clerk will please tax.

JA'S A. MAXWELL,
Comm'r.

UNITED STATES DISTRICT COURT.

No. 6835.

7th, Deposition of Ch. M. St. Clair, offered and read in evidence for claimant January 31st, 1854.

WILLIAM CULBERTSON
vs.
SOUTHERN BELLE.

The Deposition of Charles M. St. Clair, taken by consent, to be read on behalf of Claimants.

I was mate on board the Southern Belle at the time of the collision, and was on watch at the time: the torches were lighted before we made our landing; they were lighted before we approached the

wharf-boat, and up till the time of the collision. I suppose they must have been lighted, and so continued from five to ten minutes before the collision; I should say about seven minutes.

his
C. M. + ST. CLAIR.
mark.

Sworn to and subscribed before me this 21st day of January, 1854, by making his mark, being unable to write from sickness.

C. V. JONTE,
Justice of the Peace.

Cross-examined—waived.

BENJAMIN, MICOU & FINNEY,
By CHARLES & TAYLOR.

Close of evidence.

U. S. DIS'T COURT:

In Admiralty.

December Term (1853), Thursday, Feb'y 16th, 1854.

Present, Hon. THEO. H. McCALEB.

WM. B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE. } No. 6835.

Judgment of Court in favor of Libellant, and Reference to Ad'y Comm.

The Court having taken this case under advisement, and carefully considered the pleadings, evidence, and authorities adduced, this day delivered its opinion and judgment in writing, pronouncing in favor of the libellant for the damages actually sustained by him; and it was ordered that Rob't M. Lusher, Comm'r in Admiralty, prepare a report of such damages, and return the same into Court for a final decree.

Opinion and Judgment of the Court, February 16th, 1854.

U. S. DISTRICT COURT:

In Admiralty.

WM. B. CULBERTSON
vs.
THE STEAMER SOUTHERN BELLE.

This suit has been instituted to recover damages which the libel alleges, were sustained by the libellant as owner of a flat-boat, which was sunk by the Steamboat Southern Belle. The flat-boat was lying moored at the usual and prescribed place of landing for flat-boats,

and was stove by the steamer while the latter was attempting to land at the same place: the collision occured at Grand Gulf, Miss. The rules and regulations of the Selectmen of Grand Gulf have been brought to the attention of the Court, and conclusively establish the fact, that the flat-boat was in its proper place. The corporations of the cities and towns on the Mississippi, when authorized by the Legislatures, undoubtedly have the right to pass rules and regulations with respect to their landings; and it is the duty of this Court to respect and uphold them. Testimony has been introduced on the part of the respondents to show that the ordinances of the town of Grand Gulf relating to the landing are rarely, if ever, enforced. Such induce can have no weight with the Court, for if the fact be so, it may serve to show a gross dereliction of duty on the part of those who have been charged with the execution of the ordinances, but can afford no ground for this Court to decree that they are to be totally disregarded; until they are repealed by the authority that enacted them they will be presumed to be in full force, and adequate to the purposes for which they were passed; and it is a matter of no importance whether the libellant, in taking his position at the landing, did so voluntarily, or in accordance with the orders of the proper officer having the supervisory control over his actions. If he was within the pale and protection of the local regulations, the Court will hold him justified; if he was right in the position he occupied, the attempt of the steamer to land there must be regarded as an intrusion. It has been contended on behalf of the respondents, that the collision was the result of an unavoidable accident, caused by the violence of the wind, which was blowing at the time hard on shore. I have examined the evidence most confidently relied on in favor of the respondents, that of the pilot who was at the wheel of the steamer at the time of the collision, and who, as usual with pilots, testifies strongly in justification of his own conduct; and I am by no means satisfied that the collision was unavoidable. This is a common plea set up by officers of steamboats, and is seldom even plausibly sustained by evidence. In the present instance, the plea is unavailing; it is not pretended that the violence of the wind was too great for the resistance of steam; if such were the fact, the boat would have been driven to the shore before the attempt to land was made: she could not have proceeded with safety on her voyage. The force of the wind undoubtedly increased the difficulties of landing, but this was only a reason for increased care and caution. This Court has repeatedly held, that the precaution and vigilance on the part of officers of vessels propelled by steam, should be increased in proportion to the difficulties of navigation in particular localities, and in proportion to the dangers to which they are liable to expose the property of others.

It has also been contended on behalf of the respondents, that there was no light on board of the flat-boat at the time of the collision, and that she could not therefore be seen from the steamer

until it was too late to prevent the occurrence. On this point there is a conflict of evidence. The witnesses on behalf on the respondents testify that they saw no light, while those who were on board the flat-boat at the time of the collision, testify most positively that a light was brought upon deck about the time the steamboat commenced backing down from the wharf-boat: that there was a lantern exhibited on the flat-boat before the collision: I have no doubt if it was not seen on the steamer, I can only account for the fact upon the supposition that the greater glare of the torch-light from the latter was such as to dim, if not entirely to obscure, in the darkness of the night, the lesser lights near the shore. But besides the existence of a light on the flat-boat, we have the evidence of the respondents' witnesses that there was clear starlight, and some of the witnesses testify that the moon was shining at the time.

An attentive examination of the evidence and the arguments of counsel, has led my mind to the conclusion that by the observance of proper prudence and precaution on the part of the officers of the steamer, the collision could have been avoided, and that no blame can be fairly charged upon those who had charge of the flat-boat.

I therefore pronounce for the damage sustained by the libellant to be definitely ascertained by a reference to R. M. Lusher, Esq., Commissioner, upon the coming in of whose report a final decree will be entered.

EASTERN DISTRICT OF LOUISIANA,
U. S. District Court:

In Admiralty.

W. B. CULBERTSON
vs.
STEAM'R SOUTHERN BELLE. } No. 6835.

Ad'y Commissioner's Report and Assessment of Damages. Returned into Court and Filed Feb'y 20, 1854.

To the Honorable the District Court of the United States in and for the Eastern District of Louisiana, sitting in Admiralty.

In the case of Wm. B. Culbertson, owner of a flat-boat called the "Rainbow," and of her cargo, sunk at Grand Gulf, Miss. *versus* the Steamer "Southern Belle."

The undersigned Commissioner, in obedience to the order of reference contained in the opinion of the Court in the above case, rendered on the 16th of Feb'y instant, respectfully reports—

That he has carefully examined all the testimony appearing on the record in the said case, as well for the claimants as for the libellant, and particularly that of D. H. Kent, master of the flat-boat, as explained and confirmed by that of T. Elder, of Eleazar Eraus, O. P. Spangler, and H. W. Carlow, touching the nature and quantity of the cargo; that of Wm. Hutchinson, J. B. Harvey, and Wm. P.

Holloway, merchants, on the wholesale value of such cargo, at Grand Gulf, at the time of the collision and loss complained of by the libellant, and also that (taken by claimants in rebuttal) of Q. A. French, Simeon Shelden, L. W. Matthews, and Geo. W. Smith, and that he is satisfied that the actual loss sustained by the libellant, in consequence of the sinking of his boat and cargo by the Steamer "Southern Belle," at the of Grand Gulf, Miss., on or about the 3d of January, 1853, amounts to the aggregate sum of $2,100 59¾, as particularly set forth in schedule *A*, annexed to and made part of this report.

Respectfully submitted by

ROBT. M. LUSHER,
Comm.

Schedule *A*.

Statement of Cargo on Flat-boat Rainbow, and value thereof at the place where, and time when she was sunk.

(1)	2,199	galls. of stoneware, 9c. per gal.,		$197 91
	66	doz. of ½ gallon jugs, 87½ per doz.,		55 75
	2½	" " quart do 87½ "		2 18¾
	4	barrels (12 bushels) of onions, $2 25 per bl.,		9 00
(2)	1,895	bushels of potatoes, 70c. per bushel,		1,326 50
(3)	47½	b'ls of apples, $3 50 per bl., $166 25		
		Less proceeds of 25 or 28 saved and sold at G. G.,	35 00 — diff.,	131 25
	800	bushels of corn in bulk, 40c.,		320 00
		Cargo lost worth		$2,042 59¾
		Skiff lost, valued at	$8 00	
		Flat-boat,	50 00	
				58 00
		Total loss,		$2,100 59¾

Exclusive of interest and costs.

NOTES.

(1) 2,449 galls. stoneware were shipped on the flat-boat, but 250 galls. were lost before the collision in question.

(2) About 2,000 bushels were on board originally, but 105 bushels were sold at Memphis.

(3) 50 barrels of apples were shipped on board, but about 2½ were sold on the way down the river.

February 20th, 1854.

ROB'T M. LUSHER,
Ad'y Comm'r.

Decree.

U. S. DIST. COURT:

In Admiralty. February Term, 1854.

Thursday, Feb'y 3d, 1854.

Present Hon. THEO. H. MCCALEB.

WM. B. CULBERTSON, owner of Flat-boat "Rainbow" and Cargo,
vs.
STEAMER SOUTHERN BELLE. } No. 6835.

The Court having heretofore rendered its opinion and judgment herein in favor of the libellant for the amount of damage by him sustained, and the Commissioner to whom the question of damage was referred having returned his report in Court, and, after due notice thereof to the parties in interest, no exception having been taken to the same, the Court now considering that the amount of damage resulting from the collision of said steamer "Southern Belle" with the libellant's flat-boat at Grand Gulf, Miss., on or about the 3d day of January, 1853, has been properly assessed at $2,100 59¾, and also that the libellant is entitled to 5 ℘ interest thereon from judicial demand, with costs of suit:

And it appearing to the Court that on the 7th day of January, 1853, said steamer "Southern Belle," &c., on which the libellant had a lien and privilege for the satisfaction of said damages, was delivered to the claimant and bailee thereof, T. M. White, for and on behalf of her owners, Elam Bowman, H. B. and W. M. Shaw, and S. A. Laconte, of Tensas Parish, and J. D. Sebastian, of Concordia, Louisiana, on a bond or admiralty stipulation in the sum of $5000 00, with John C. Shannon, of New Orleans, as surety:

It is now therefore ordered, adjudged, and decreed, that there be judgment herein in favor of William B. Culbertson, the libellant, and against the said owners and surety of the steam'r "Southern Belle," jointly and severally, for the full sum of two thousand one hundred 59¾-100 dollars, damages, with five per cent. interest therein from the seventh day of January, 1853, till paid, and costs of suit, hereby taxed at $183 25, namely—

Proctor's fees,	$57 50
Commiss'r's fees,	43 45
Ad'y Commiss'r's fees,	18 00
Clerk's fees,	41 30
Marshal's fees,	23 00
	$183 25

U. S. DIST. COURT:

In Admiralty.

February Term, 1854. Wednesday, March 1st, 1854.

Present Hon. T. H. McCALEB.

Order of Appeal.

WILLIAM B. CULBERTSON
vs. } 6835.
STEAMER "SOUTHERN BELLE."

On motion of Mess. Hunton and Bradford, Proctors for the claimants and respondents herein, and on their suggesting that said parties are aggrieved by the decree herein of the 23d ultimo, and desire to appeal therefrom:

It is ordered by the Court that said claimants and respondents, on furnishing an appeal bond in the sum of $3000 00, have and be allowed an appeal from said decree, returnable to the next term of the Circuit Court of the United States for the 5th Circuit and Eastern District of Louisiana.

Appeal Bond.

Of 3000 $.

Filed, recorded March 4th, 1854.

WM. B. CULBERTSON vs. ST'M B'T SOUTHERN BELLE.

Know all men by these presents, that we, H. B. and W. M. Shaw, Elam Bowman, C. A. Laconte, and J. D. Sebastian, owners of steamboat "Southern Belle," as principals, and John C. Shannon and C. H. Waldo, of New Orleans, as sureties, are held and firmly bound unto Wm. B. Culbertson, appellee, in the sum of Three Thousand Dollars, lawful money of the United States, for the payment whereof well and truly to be made to the said W. B. Culbertson, his heirs, administrators, or assigns, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Dated, and by us signed, at the city of New Orleans, this 4th day of March, A. D. eighteen hundred and fifty-four.

Whereas the above bounden claimants and owners of the S. B. Southern Belle have lately moved for and obtained an appeal from the judgment and decree of said District Court, bearing date the twenty-third day of February, A. D. 1854, said appeal returnable to the next term of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, in the aforesaid suit in admiralty—

Now, therefore, the condition of the above obligation is such that if the said appellants shall prosecute their said appeal with effect, and pay such decree, costs, damages, and other expenses as shall be

awarded against them, then said obligation to be void; otherwise it shall remain in full force and effect.

Signed and delivered in presence of
G. P. McPHEETERS.

H. B. & W. M. SHAW. [L. S.]
ELAM BOWMAN, p. [L. S.]
W. M. SHAW.
Y. Q. SEBASTIAN, p. [L. S.]
W. M. SHAW.
C. A. LACOSTE, p. [L. S.]
W. M. SHAW.
JOHN C. SHANNON. [L. S.]
C. H. WALDO. [L. S.]

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

I, Needler R. Jennings, Clerk of the District Court of the United States, sitting at New Orleans, in and for said District, do hereby certify that the foregoing 191 folios of manuscript, diagrams, &c., contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in admiralty, wherein Wm. B. Culbertson is libellant, and the owners of the steamer "Southern Belle" are respondents, No. 6835 of the general docket of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twenty-fourth day of April, one thousand eight hundred and fifty-four, and seventy-eighth year of American Independence.

[SEAL.] N. R. JENNINGS,
Clerk U. S. Dist. C't E. D. of La.

I, Theodore H. McCaleb, Judge of the District Court of the United States for the Eastern District of Louisiana, do certify that N. R. Jennings, who subscribed the above certificate, was at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to be given to all his attestations as such clerk, and that his above certificate is in due form of law.

In testimony whereof I hereto set my hand and seal, at New Orleans, this 24th day of April, A. D. 1854.

THEODORE H. McCALEB.

UNITED STATES OF AMERICA,

William B. Culbertson, Libellant, greeting.

You are hereby cited and admonished to be and appear at a Circ't Court of the United States, to be holden in the city of New Orleans on the 4th Monday of April next, pursuant to an order of appeal granted on the first day of March, 1854, by the District Court of the United States in and for the Eastern District of Louisiana, in a certain cause in admiralty, entitled Wm. B. Culbertson *B. Culbertson* vs. the Steamer Southern Belle, &c., wherein the claimants and sureties of said boat are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the appellants, as in the said order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness hereto my hand and the seal of the said court, at the city of N. Orleans, this 18th day of March, A. D. 1854.

THEO. H. McCALEB,
Judge of U. S. Dist. C't. E. D. La.

Attest R. M. LUSHER,
D. Clerk.

Mess. BENJAMIN MICOU & FINNEY for Libellants.

Marshal's Return.

Received March 20th, 1854, and on the same day served a copy of the written Citation of Appeal on Messrs. Benjamin & Finney & Micou, in the manner following, to wit, by handing the same to John Finney, one of said firm of Benjamin, Micou & Finney, in person, in the city of New Orleans, and returned same day.

EMILE MARY,
D'y Marshal.

[No. 6,835.

Mem'm of Costs in Dist. Court, Payment, &c.

(See Decree, page 189, for Costs taxed against Respondents by Claimants.)

Proctor's fees ($57 00 taxed), on acc't, $12 00; paid to Mar. Scott, Jan. 7, '53. Ad'y Comm'rs compensation, $18 00; paid by libellant. Clerk's fees, cost of suit, $41 30, paid; $29 30 by lib't, $12 by res. Mar. Scott's fees, Sar. (7, '53), $17 00; paid on bonding by claimant. Kennedy's, ditto, $6 00.

Mem'm as to Comm's Fees, taxed as seen, at $43 45.

The depositions of Ballinger, Kent & Trust are charged at $20 00, but taxed at $2 each	$6 00
Those of J. W. Champlin & others, taken at G. Gulf, are *charged* at $100 00, but taxed at	31 20
Those of H. W. Carlow & others, taken in Co., are properly charged at $6 25, & so taxed	6 25
	$43 45

Attest: ROBERT M. LUSHER,
D'y Clerk.

Costs of Appeal—Clerk's fees, $69 15. Paid by Master of St. "Southern Belle."]

[The above in original crossed.]

Proceedings in Circuit Court.

Admissions of Counsel. Filed on trial, 16 June, 1854.

The "Southern Belle" is a regular packet, running between New Orleans & Vicksburg, Miss. The regular day of departure from New Orleans is Saturday of each week, at 5 o'clock P. M., and in ascending, the boat passes Grand Gulf in the morning of the next Monday.

In returning, the boat reaches Grand Gulf again in the night of Tuesday, and remains until eight o'clock of the next day (Wednesday), when it starts again for New Orleans.

On the return trip, therefore, before the collision, the boat left Grand Gulf at 8 o'clock, A. M., of Wednesday, the 29th Dec'r, 1852, and on the next trip reached Grand Gulf again the morning of Monday, the 3d January, 1853.

E. A. BRADFORD,
for Claimant.

BENJAMIN & FINNEY,
for Libellants

Proceedings in the Circuit Court.

Minutes, April Term, 1854.

NEW ORLEANS, *Friday, 16th June*, 1854.

Present HON. J. A. CAMPBELL, Presiding Judge.

WILLIAM B. CULBERTSON
vs.
STEAMER SOUTHERN BELLE. } No. 2,320.

This cause was argued by John Finney, Esq., for the Libellants, and by E. A. Bradford, for Respondents, and was submitted to the Court and taken under advisement.

Opinion

Delivered by HON. J. A. CAMPBELL 13th Nov. A. D. 1854.

This suit was commenced by the Appellee, the owner of the Flat-boat "Rainbow" & cargo, for their loss by a collision with the Libellee.

In January, 1853, this flat-boat, laden with corn, fruit, potatoes, and earthenware, was moored at Grand Gulf, Mississippi, about one hundred yards below a wharf-boat, which made the ordinary landing-place at that town, "close into a bluff caving bank." About day-dawn of the third January, the Steamer "Southern Belle" arrived at the landing-place to make a landing, but found it occupied by the Steamboat "Atlantic." Her officers concluded to come in below the wharf-boat, and in executing this design the collision occurred. The evidence is, that the officers of the "Southern Belle" did not see the flat-boat until a collision became unavoidable. So that the inquiry is reduced to ascertaining if there was any neglect or inattention by which this oversight was occasioned.

The Libellant says, that the "Rainbow" occupied the place set apart for flat-boats, in the ordinances of the town: and there was also an appropriate and distinct place for steamboats to land. That the Libellee invaded this rightful possession of the "Rainbow," and was therefore in this culpable.

The evidence is, that in 1837 an ordinance was passed, assigning different parts of the river bank, at this town, as landing-places for different classes of vessels, and that the flat-boat was within the limits designated for her class. But the evidence further shows that this ordinance had become obselete, was rarely used, and but very little known, even to the Corporators; and experienced officers and navigators of boats on the Mississippi River say, they never heard of such a regulation. The regulation is a police regulation of a small town, with but few vessels to conduct its commerce. At the time this collision occurred, some of the landmarks by which the boundaries of the different sections had been defined, had ceased to exist; and neither of the parties to this suit had any reference to the ordinance in their proceedings.

The convenience of those engaged in navigating boats and shipping produce had determined the localities for the landing of boats of the different descriptions, and it does not appear that the corporate authorities interfered in their customs. Under such circumstances I cannot give much weight to the fact that there was an ordinance which the one party accidentally followed, or the other unwittingly violated. It would be unjust to impute to the owners of steamboats a knowledge of such regulations, as a matter of law, and put constructions upon their conduct, as if they were transgressors, in case of their inobservance. Before transient vessels can be charged for anything more than the tax or penalty such an ordinance contains

for landing at a different place from that specified, it should appear that the divisions it ordains had been recognized and adopted in the habits and usages of the place. No such evidence has been given, and I shall therefore treat the case without reference to this ordinance.

The wharf-boat forms the centre about which the steamboat business of a town like Grand Gulf concentrates. The passengers congregate upon it, and freight is commonly delivered at it. The evidence is, that for some distance above and below, cotton was usually shipped on steamboats at this place, and the weight of the testimony fixes the usual flat-boat landing at a greater distance, though frequent interruptions of these customs are shown. The witness, Sheldon, who had kept the wharf-boat for some years, says: "I told the master of the flat-boat that he was not in the proper place; that he was liable to be sunk by the first raft that came along, and that he was in the way of steamboats, and liable to be injured by them; that it was the cotton landing, and that he had better move his flat-boat where other flat-boats were." And the testimony of Cowarden and Pettit and the circumstances of this case, show the justice of this conclusion, and the magnitade of the danger into which the boat was placed, by a neglect of this friendly admonition.

The steamboat upon her arrival at Grand Gulf could not land at the wharf-boat, or alongside of the Atlantic, without great exposure, and the landing above was occupied. A strong gale blew immediately across the river, so that she could not retain her position outside. Her officers thereupon concluded to drop below the wharf-boat.

The evidence shows that the torches on the "Southern Belle" were at this time lighted, that the officers were at their places; the men on the forecastle, and the boat conducted with caution. The order to back the boat at this time, was that which led to the injury. The headway of the boat was thereby lost, and the influence of the wind over her movement acquired. The command was given without any notice of the location of the "Rainbow," and without, therefore, any particular precaution to avoid a collision with her. The object of the order was to extricate the boat from an impending difficulty, and in ignorance of danger from any quarter. The question here is, was this order under the circumstances justified? Before considering the facts of the case, it may be proper at this point to ascertain what decree of caution, skill, forecast and presence of mind, are required under such, or under any circumstances; and it is evident that the law does not contemplate that every danger shall have been foreseen, or every precaution taken that consummate intelligence and courage can provide. The law expects the caution which a reasonable and prudent man, acquainted with his business and conscious of his responsibilities, will habitually exercise. "It is sufficient that a reasonable precaution be taken, such as is usual and ordinary in similar cases; such as has been found by long experience in the ordinary

course of things to answer the end, the end being the safety of life and property." The Europa, 14 *Jurist*, 627. (2 *L. & E. R.* 557.)

The precautions exacted by prudence, and consequently by law, vary according to circumstances. Where there is a great occasion to anticipate danger, the vigilance and care must be increased. A boat may not run at a great speed through a crowded port, or in a dense fog in the vicinity of other vessels; while such a restriction is not imposed on the ocean. Sailing vessels were not required at all places to exhibit lights during the night, but in a situation of exposure this precaution is essential, and the absence of it accounted gross negligence. The Victoria, 3. *W. Rob.* 49; 12 *How.* 443. The Gazelle, 2 *W. Rob.* 516; 6 *Ann. La. R.*

In the present case, the libellee had passed up the river without perceiving the "Rainbow," and it is admitted that until her arrival at the wharf-boat, no signal lights were displayed on the "Rainbow." The evidence further shows, that generally, the vacant space below the wharf-boat had been appropriated for steamboats, and it was called the steamboat landing; nor do I think that it makes any difference, in the present case, that the wharf-boat had been, a very few days before, carried lower down, for the libellee could not have known of the change. Her officers were authorized to conclude that the state of facts to which they had been accustomed for years, still existed. It is obvious that in the winter season, when shipments of cotton are constant, that an open port of that kind was necessary, and the evidence is, that the wharf-boat was removed to be more conveniently situated with reference to this cotton landing. The evidence makes it clear that the flat-boat was in a condition of exposure, and that no prudent man would have taken such a place, without at the same time employing the ordinary means of warning other vessels of her presence. Conceding, then, that the officers of the "Southern Belle" employed the means at hand to discover the "Rainbow" and failed, I can perceive no want of caution on their part, and no mismanagement in the direction of the boat.

The question, then, occurs, did the officers use the means at hand in order to discover the danger? Several of the witnesses from the town of Grand Gulf, some of them favorably situated for observation, on the boiler deck of the wharf-boat, say there was sufficient light for the officers to see the flat-boat, and that they saw her at the time. It is to be remarked of this testimony, that the vision of the witnesses was assisted by their knowledge that the flat-boat was in this exposed condition, and by an apparent presentiment that a collision would take place. But a more important consideration is applicable, and that is, the period of time to which our reference is made is a very short one; the time between the arrival of the "Southern Belle" and immediately before the accident. After this the flat-boat fell under the reflection from the lights of the steamboat, and might have been clearly seen. The witnesses from the "Atlantic" furnish testimony which, in my opinion, is very trust-

worthy. Cowarden, the mate, says: "The 'Atlantic' was coming down the river, and having some freight to put out at Grand Gulf, rounded to, in order to make the landing. After rounding to, found the wind blowing so strong on shore that he was afraid to attempt landing against the wharf-boat for fear of damaging the 'Atlantic's' sides. Witness then observed to Mr. Pettit, the pilot of the 'Atlantic,' that they had better land below the wharf-boat. Just at that time, witness called to the watchman to bring out the torch used when making a landing, and *then*, after the torch was brought, discovered a flat-boat lying right below the wharf-boat. Witness cannot state how far below, but it was just where the 'Atlantic' was coming in if the flat-boat had not been there. Discovered the flat-boat when within some twenty or twenty-five yards of the bank. Immediately on discovering the flat-boat, went ahead on the boat and landed on the wharf-boat. Witness remarked, on making the landing, to the man who kept the wharf, that he thought the flat-boat was lying in a most dangerous place; that some boat would come in and sink it." He says further: "Witness did not discover the flat-boat until the torches were brought, and believes that he would not have discovered her without them."

The pilot, Pettit, says: "That he discovered the flat-boat by the light of the torches on board the 'Atlantic.' Does not think there was light enough for him to have discovered it at the distance he was (fifty yards), without the torches." This vessel was in the most favorable position for observation. She was nearly abreast of the flat-boat, and but a short distance from her. Their movement required them to keep the headway of the boat undiminished, and thus they were exempted from the casualty which befell the "Southern Belle." These witnesses testify that the collision took place very shortly after their arrival at the wharf-boat, and that the conditions of the "Southern Belle" were not more favorable than theirs had been, when they commenced rounding their boat, without their perceiving the "Rainbow," and without any reasonable ground for presuming that she was at the landing, the conclusion of the officers of the "Southern Belle" was taken to come in below the wharf-boat.

Her pilot says: "The 'Southern Belle' was backed and was coming in at what was called the Cotton Landing, and it was not till the boat was close in shore, that a flat-boat was discovered lying under the bank. Immediately went ahead in order to avoid coming into collision with the flat-boat, but before they could get headway on the boat, we were driven by the strong wind against the flat-boat. The flat-boat was so close in under the shade of the bank, that it could not be seen until we were almost on it." The witnesses, Smith and McFarlane, afford a circumstantial account of the collision to the same effect. Smith says: "The Southern Belle having failed to make a landing on the wharf-boat, then backed down with the intention, as I thought, to come in as near under the stern of the 'Atlantic' and the wharf-boat as was safe. About the time the 'Southern

Belle' cleared the stern of the 'Atlantic,' a flaw of wind struck her and threw her over, and careened her down very much, and she seemed to be almost unmanageable. In this condition she went broadside into shore, and crushed the flat-boat 'Rainbow.'" It is objected, that if the difficulties of navigation were such as to render the boat unmanageable, that she should not have been run; and that the *vis major* to which she was exposed, was of itself a proof of mismanagement and recklessness. But such an objection is untenable. There is no reason for supposing that there was any imprudence on the part of the officers of the "Southern Belle" in conducting their voyage on the morning in question. It would perhaps have savored of timidity and weakness, if they had abandoned it upon such an obstacle as existed. The obligations of the officers were certainly increased with the increase of obstacles, but under no conditions could there be a requisition for more than the proper precautions to avoid the dangers of their situation.

In the case of the Bolivia, 4 *Notes of Cases*, 209, the vessel was discharged because the Judge of the Admiralty concluded, "there is no proof that the collision arose from any absence of due care and caution, or from want of seamanship." And in the "Europa," before cited, inevitable accident is defined to be "where one vessel doing a lawful act, without any intention of harm, and using proper precaution to prevent danger, unfortunately happens to run into another vessel."

A further inquiry is proper, and that is, whether the "Rainbow" is free from blame. In the absence of the proof in reference to the town ordinance, it would be difficult to relieve that boat from censure for taking an usual and unauthorized location. The evidence satisfies me she was greatly exposed, and should have taken extra caution in consequence. The evidence of the Captain of the boat as to the light is not very clear, but at some time upon his apprehension of danger, he seems to have obtained a lantern with a lighted candle which he brought to the deck. My conclusion is, that there was no light exhibited which could afford distinct and intelligible notice to the officers of the "Belle." The question presented is the same that occurred in the "Victoria," 3 *W. Reib.* 59; that looking to the season of the year in which this collision took place, the state of the night, and the locality of the vessel, whether it was not obligatory as a matter of reasonable precaution, for her to have carried and exhibited an efficient light. If the carrying and exhibiting such a light would have tended to prevent a collision, it was a duty imposed upon the master to have done so; and for this reason, that all persons are bound to take due and proper pains to avoid an accident. And no man can justly complain of an accident that happens to himself, if by reasonable and proper care he could have prevented it.

Upon the whole case my conclusion is, that the libellant is not entitled to the relief prayed for, and that the judgment of the District Court must be reversed with costs, and the libel dismissed.

Decree.

November Term, 1854.

NEW ORLEANS, *Monday*, 13 *Nov.*, 1854.

Present, HON. J. A. CAMPBELL, Presiding Judge.

WILLIAM B. CULBERTSON vs. STEAMER SOUTHERN BELLE. } 2320.

This cause came on to be heard at the last term, upon the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof it is now ordered, adjudged, and decreed, that the decree of the District Court be annulled, avoided, and reversed, and that the libel herein be dismissed with costs in both Courts.

Decree rendered 13 November, 1854.
" signed 20 November, 1854.

J. A. CAMPBELL,
Associate Justice of the Supreme Court of the United States.

Petition for Appeal.

Filed 2 Feb'y, 1855.

To the Hon. the Circuit Court of the United States for the Eastern District of Louisiana.

The petition of William B. Culbertson respectfully represents that a final decree was rendered against him on the 20th day of November, 1854, in the suit of William B. Culbertson *vs.* Steamer Southern Belle, No. 2320 of the Docket of this Court, in which he is informed and believes there is error to his prejudice.

Wherefore he prays that an appeal be allowed him from the said decree, returnable to the next term of the Supreme Court of the United States, on his giving bond and security conditioned according to law, and in such sum as the Court may direct.

BENJAMIN & FINNEY.

Order granting Appeal.

MINUTES—November Term, 1854.

NEW ORLEANS, 2*d February*, 1855.

Present, Hon. T. H. MCCALEB, District Judge.

WILLIAM B. CULBERTSON vs. STEAMER SOUTHERN BELLE. } No. 2320.

On motion of Jno. Finney, of Counsel for William B. Culbertson, and on his filing his petition praying an appeal from the decree

herein rendered against him on the 20th November, 1854, it is ordered that the same be allowed returnable to the next term of the Supreme Court of the United States, on appellant's giving bond with good and solvent security, in the penal sum of five hundred dollars, conditioned according to law.

Appeal Bond.

Filed 9th Feb'y, 1855.

Know all men by these presents, that we, William B. Culbertson, as principal, and Graham & Buckingham as sureties, are held and firmly bound, jointly and severally, unto Henry B. Shaw, William M. Shaw, Elam Bowman, Sidney A. Lacoste, John D. Sebastian, owners of tow-boat "Southern Belle," in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said named obligees, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents, sealed with our seals, and dated the ninth day of February, in the year of our Lord A. D. 1855.

Whereas the said William B. Culbertson has presented a petition to the Hon. the Circuit Court of the United States for the 5th Circuit, holding sessions in and for the Eastern District of Louisiana, praying an appeal from the decree rendered against him in this cause on the 20th day of November, 1854, and obtained an order allowing the same, returnable to the next term of the Supreme Court of the United States: Now, the condition of the above obligation is, that we, the above bounden principal and surety, will well and truly pay to the said above named obligees, the defendants in said appeal, all such damages and costs as they may recover against us by the decree of the said Supreme Court.

WILLIAM B. CULBERTSON. [SEAL.]
p'r BENJAMIN & FINNEY,
Proctors.
GRAHAM & BUCKINGHAM. [SEAL.]

UNITED STATES OF AMERICA—CIRCUIT COURT OF THE UNITED STATES.

Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, Clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, do hereby certify, that the foregoing 214 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings